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NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

**JUST WAR THEORY RELOADED: THE ETHICS OF
SOF IN MODERN CONFLICT**

by

Scott W. Orr

June 2018

Thesis Advisor:
Second Reader:

Bradley J. Strawser
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**JUST WAR THEORY RELOADED: THE ETHICS OF SOF IN MODERN
CONFLICT**

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Submitted in partial fulfillment of the
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**MASTER OF SCIENCE IN DEFENSE ANALYSIS
(INFORMATION OPERATIONS)**

from the

**NAVAL POSTGRADUATE SCHOOL
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ABSTRACT

Recent conflicts have directed much academic and media attention to special operations forces (SOF). Despite the attention, the application of SOF in asymmetric conventional warfare or irregular conflict has not been fully examined in the context of just war theory. In addition, SOF have often been portrayed superficially, painting them as indiscriminate or unscrupulous warriors. This thesis argues to the contrary, that the application of SOF represents an evolution of just war theory in an era of increasingly irregular conflict. This thesis expands just war thinking to activities short of armed conflict. It contends that SOF constitute a unique extension of the ethical principles that morally bind military capabilities under just war theory. Moreover, this thesis examines the moral utility of SOF operations as a means of preventing unnecessary loss of life prior to, during, and in the wake of armed conflict. SOF can function, in both theory and practice, as a distinct moral improvement over most other forms of irregular or indirect conflict, across nearly all phases of conflict. These conclusions aim to provide insight to planners, observers, and policy-makers who seek to understand and efficiently respond to emergent or persistent challenges to global stability and national security.

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LIST OF ACRONYMS AND ABBREVIATIONS

AFSOC	United States Air Force Special Operations Command
AFSOF	United States Air Force Special Operations Forces
ARSOF	United States Army Special Operations Forces
C2	command and control
CA	Civil Affairs
CAS	close air support
COIN	counterinsurgency
CT	counter-terrorism
DoD	United States Department of Defense
DOS	United States Department of State
EU	European Union
FID	foreign internal defense
GCC	Geographic Combatant Command
GRU	Main Intelligence Agency <<Главное разведывательное управление (ГРУ)>>
GWOT	global war on terror
IMF	International Monetary Fund
JRSO&I	joint-reception, staging, onward-movement, and integration
LOAC	law of armed conflict
MILDEC	military deception
MOS	military occupational specialty
NATO	North Atlantic Treaty Organization
OSS	United States Office of Strategic Service
PGM	precision guided munition
PR	personnel recovery
PRT	Provincial Reconstruction Team
PSYOP	Psychological Operations
ROE	rules of engagement
SBU	Security Service of Ukraine <<Служба Безпеки України (СБУ)>>

SEALs	United States Navy Sea, Air, and Land Teams
SECDEF	United States Secretary of Defense
SF	United States Army Special Forces
SFA	security force assistance
SFODA	Special Forces Operational Detachment Alpha
SOCOM	United States Special Operations Command
SOF	Special Operations Forces
SOFA	Status of Forces Agreement
TAR	target acquisition radar
TEL	transporter erector launcher
UN	United Nations
U.S.	United States

EXECUTIVE SUMMARY

Recent conflicts have directed much academic and media attention to special operations forces (SOF). Despite the attention, the application of SOF in asymmetric conventional warfare or irregular conflict has not been fully examined in the context of just war theory. In addition, SOF have often been portrayed superficially, painting them as indiscriminate or unscrupulous warriors. This thesis argues to the contrary, that the application of SOF represents an evolution of just war theory in an era of increasingly irregular conflict. The arguments presented demonstrate the need to expand just war theory and extend just war thinking to activities below the level of armed conflict. It also contends that SOF constitute a unique extension of the ethical principles that morally bind military capabilities under just war theory. Moreover, the work examines the moral utility of SOF operations as a means to prevent unnecessary loss of life prior to, during, and in the wake of armed conflict scenarios. The thesis concludes that SOF can function, in both theory and practice, as a distinct moral improvement over most other forms of irregular or indirect conflict, across nearly all phases of the Department of Defense's (DoD's) continuum of conflict, most especially when applied to activities below the level of armed conflict in Phase Zero.¹ These conclusions aim to provide insight to planners, observers, and policy-makers who seek to understand and efficiently respond to emergent or persistent challenges to global stability and national security.

Just war theory has long served as a foundation for debating the morality of war. Over time militaries, particularly Western ones, have adopted many of the principles and concepts of the just war tradition. This adoption has resulted in clear components of just war thinking into DoD documents, for example, the Law of Armed Conflict as described

¹ The continuum of conflict lists six phases of conflict, the continuum and phases are described in more depth in the Joint Publications 3-0 and 5-0. Joint Chiefs of Staff, *Joint Publication 3-0, Joint Operations* (Suffolk, VA: United States Department of Defense, United States Joint Forces Command, Joint Warfighting Center, Joint Doctrine Group, 2006); Joint Chiefs of Staff, *Joint Publication 5-0, Joint Operational Planning* (Suffolk, VA: United States Department of Defense, United States Joint Forces Command, Joint Warfighting Center, Joint Doctrine Group, 2017). The U.S. DoD defines Phase Zero as, "Shape (Phase 0). Joint and multinational operations—inclusive of normal and routine military activities—and various interagency activities are performed to dissuade or deter potential adversaries and to assure or solidify relationships with friends and allies." Joint Chiefs of Staff, xxiii.

in the DoD Law of War Manual.² By examining SOF core activities and how they are constructed during overt warfare or armed conflict, it is apparent that this thesis confirms the applicability of just war thinking and further establishes its adequate and comprehensive ability to analyze the nuances of SOF in armed conflict. On the other hand, more recent scholarship by so-called revisionist just war theorists has added new and ever more demanding elements for consideration when an armed conflict is irregular in nature, as we commonly see in contemporary counter-insurgency (COIN) or counter-terrorism (CT) campaigns and operations.³ A common critique of such revisionist thinking is that it makes executing irregular warfare so restrictive as to impede one's ability to efficiently prosecute the war—and ultimately end it.⁴ However, it is possible that this assessment of revisionist thinking may be disproportionately focused on the assumption of large-scale combat forces executing major operations or campaigns as the primary means to achieve success. This thesis demonstrates that applying SOF in support of large-scale combat operations may yield a degree of moral utility that allows a military force to approach the discrimination and enhanced proportionality required by revisionist thinking.⁵

Moreover, this thesis establishes that SOF, for both practical and moral reasons, can and should be used in competition below the level of armed conflict.⁶ In fact, it

² Department of Defense, *Department of Defense Law of War Manual* (Washington, D.C.: General Counsel of the Department of Defense Washington United States, 2015).

³ Jeff McMahan, *Killing in War* (Oxford: Oxford Univ. Press, 2011); Ryan Jenkins, Michael Robillard, and Bradley Jay Strawser, *Who Should Die? The Ethics of Killing in War* (Oxford: Oxford University Press, Forthcoming).

⁴ Strawser notes the difficulty of executing modern conflict within a just war context. See Bradley Jay Strawser, "Walking the Tightrope of Just War," *Analysis* 71, no. 3 (July 1, 2011): 533–44, <https://doi.org/10.1093/analys/anr070>.

⁵ The U.S. DoD defines irregular warfare in JP 1-02 as, "A violent struggle among state and non-state actors for legitimacy and influence over the relevant population(s). Also called IW." Joint Chiefs of Staff, *Joint Publication 1-02, Department of Defense Dictionary of Military and Associated Terms* (Suffolk, VA: United States Department of Defense, United States Joint Forces Command, Joint Warfighting Center, Joint Doctrine Group, 2017).

⁶ Colonel (ret.) Brian Petit describes practical advantages that can be gained using SOF in Phase Zero. Lieutenant General (ret.) James Dubik does not specifically identify moral advantages of SOF in Phase Zero, some of the concepts he describes are applied to SOF by the author in this thesis. Brian S. Petit, *Going Big by Getting Small: The Application of Operational Art by Special Operations in Phase Zero* (Denver, Colorado: Outskirts Press, 2013); James M. Dubik, *Just War Reconsidered: Strategy, Ethics, and Theory* (University of Kentucky: University Press of Kentucky, 2016).

concludes that, given the choice, the whole of the United States (U.S.) government should choose to invest more heavily in Phase Zero when considering the preponderance of SOF employment and application.⁷ In this case, there is the potential to receive a much higher “return on investment,” in that success in Phase Zero precludes the escalations leading to subsequent phases of conflict, including overt warfare, that require the deployment of large-scale combat forces. From a practical standpoint, approaching problems in this way uses only a fraction of the usual resources expended, in line with the traditional SOF operating principle economy of force to achieve positive outcomes.⁸ Of course, this is a strong utilitarian point in and of itself—however, this thesis argues that there is an additional return on investment that is realized by the moral utility achieved by investing in Phase Zero.⁹

One of the primary goals in Phase Zero is to avoid the expansion of conflict or the onset of armed conflict all-together. This type of outcome can be described as morally superior to the goal of other phases in the continuum of conflict. However, in the case that this goal is not realized, Phase Zero can limit the scope of violence required to achieve victory in Phase Two and beyond. When compared to protracted large-scale combat operations, this result is also morally superior to the alternative. Effective Phase Zero work succeeds in that it is designed to operationalize the integrated country strategies designed by the Department of State’s (DOS) foreign affairs and diplomatic missions abroad.¹⁰ Each National Security Strategy (NSS) since the Clinton Administration makes clear that the

⁷ Former Secretary of Defense Robert Gates advocated for a similar investment in Phase Zero capability within the DOS. “Transcript | Robert Gates | Speakers | Landon Lecture Series | Kansas State University,” November 26, 2007, <https://www.k-state.edu/landon/speakers/robert-gates/transcript.html>.

⁸ Economy of force refers to the effective application of military capabilities to reduce a problem. Generally speaking, the idea is to yield as many positive results using as little military capability and resources as possible.

⁹ Moral utility is the author’s term to describe the comparative advantage, specifically in terms of morality, using one military method versus another to achieve the desired military or political endstate.

¹⁰ The term *operationalize* is military jargon to describe a deliberate planning and execution process of a series of tasks designed to provide measurable and quantifiable results based on a strategy delivered by a higher headquarters or other government agency responsible for providing strategic goals, objectives, direction, and vision. In this case, the DOS Missions abroad (during normal diplomatic relations) design integrated country strategies approved by U.S. Ambassadors, SOF *operationalize* parts of the strategy by analyzing the assigned goals and developing a plan, which is briefed back to the U.S. Embassy Country Team, on how SOF plan to achieve some of the objectives identified in the integrated country strategy.

U.S. Government believes that engagement can help to promote the sovereignty and autonomy of allied and partner nations worldwide, which in turn promotes regional security and stability.¹¹ The U.S. Government, of course, adopted many of these concepts from ideas like soft power, popularly described by Joseph Nye—seeking to create stabilizing influences by reinforcing international norms and conventions.¹² The U.S. experience in and the successful outcome of the Cold War likely shaped the aim and tenor of the subsequent NSS’ emphases on regional stability, and their ambitions for achieving influence.

SOF in Phase Zero help to enable the exercise of sovereignty in other nations by assisting allied and partner nations’ security forces across a range of specialized tasks.¹³ First, SOF facilitate increased internal security force capability and capacity by executing foreign internal defense or security force assistance. These activities provide specific and focused training tailored to the needs of the ally or partner and facilitate the development of precise and nuanced skills to counter subversive elements. Second, and depending on the level of capability and capacity of a host-nation security force, SOF can facilitate the discovery of adversarial clandestine or covert activities occurring within their nation aimed at subverting their autonomy. Third, SOF and host-nation security forces can begin to

¹¹ William J. Clinton, “A National Security Strategy of Engagement and Enlargement” (Washington, DC: Executive Office of the President Washington DC, 1994), <http://nssarchive.us/national-security-strategy-1994/>; William J. Clinton, “A National Security Strategy of Engagement and Enlargement” (Washington, D.C.: Executive Office of the President, 1995), <http://nssarchive.us/national-security-strategy-1995/>; William J. Clinton, “A National Security Strategy of Engagement and Enlargement” (Washington, D.C.: Executive Office of the President, 1996), <http://nssarchive.us/national-security-strategy-1996/>; William J. Clinton, “A National Security Strategy for a Global Age” (Washington, D.C.: Executive Office of the President, 2000), <http://nssarchive.us/national-security-strategy-2000/>; George W. Bush, “The National Security Strategy of the United States of America” (Washington, DC: Executive Office of the President Washington DC, 2002), <http://nssarchive.us/national-security-strategy-2002/>; George W. Bush, “The National Security Strategy of the United States of America” (Washington, DC: Executive Office of the President Washington DC, March 2006), <http://nssarchive.us/national-security-strategy-2006/>; Obama, Barack, “National Security Strategy” (Washington, D.C.: Executive Office of the President, May 2010), <http://nssarchive.us/national-security-strategy-2010/>; Obama, Barack, “National Security Strategy” (Washington, D.C.: Executive Office of the President, February 2015), <http://nssarchive.us/national-security-strategy-2015/>.

¹² Joseph Nye, *Soft Power: The Means to Success in World Politics* (New York, NY: Public Affairs, 2004).

¹³ Petit, *Going Big by Getting Small*; United States Army Special Operations Command, “USASOC Strategy 2035” (USASOC G5, April 2016), <http://www.soc.mil/Assorted%20Pages/USASOC%20Strategy-2035.pdf>.

identify threats, warnings, and indicators that greatly aid their national decision-making authorities as well as DOS foreign affairs and diplomatic missions in having a clear and comprehensive understanding of emergent or persistent challenges. Finally, SOF in Phase Zero can aid in the positive attribution of adversarial activities below the level of armed conflict.¹⁴

With respect to just war theory, this thesis identifies that these goals and objectives are morally permissible, and further that they provide a strong justification for an expansion of the theory itself. Particularly, just war theory does not address the morality of competition below the level of armed conflict. This thesis recommends that just war thinking be expanded to include the concepts of *jus ad conflictum* and *jus in conflictus*. These two extensions would cover, respectively, the moral principles and criteria governing justification for entering into such competition, and those governing permissible actions within that competition. The aim of the work is to focus more academic attention and discussion on the morality of entering into a competition below the level of armed conflict as well as the morality of actions and activities that occur below the level of armed conflict. Although this thesis by no means treats the constituent elements of these concepts exhaustively, rather, it should be viewed as an appeal to just war theorists for a more thorough exchange regarding the moral implications of competition below the level of armed conflict.

Although this thesis only begins to explore the outline such extensions of just war theory would take, some clear moral criteria are apparent. Considering *jus ad conflictum* from a traditional just war theory perspective, the objectives SOF pursue in Phase Zero

¹⁴ United States Special Operations Command, “USSOCOM 2020 Strategy” (USSOCOM G5, 2013); Training and Doctrine Command United States Army, Combined Arms Center United States Army, and Combat Development Division United States Marine Corps, “Multi-Domain Battle: Evolution of Combined Arms for the 21st Century 2025-2040” (United States Army, Combined Arms Center, Forthcoming).

reinforce international norms and conventions that support the legalist paradigm.¹⁵ The legalist paradigm is an element of traditional just war theory that articulates every nation's moral right to sovereignty and self-determination, free from the imposition of another nation's will—an imposition of will on another sovereign entity is identified by just war thinking as national aggression and runs contrary to the legalist paradigm.¹⁶ According to just war logic, national aggression can usually be a justified *casus belli* under the frame of *jus ad bellum*.¹⁷ If we consider this from a revisionist just war theory perspective, these same objectives represent a just intent in that they are aimed at preserving autonomy as opposed to imposing will through coercion. Further discussion on the subject could reveal scenarios in which imposing one's will through coercion, depending on adversary actions, may be morally permissible. These basic concepts could form the fundamental elements of *jus ad conflictum*.

Similarly, *jus in conflictus* might also include an apparent traditionalist and revisionist component—just practices. Just practices are acts that are grounded in proportionality and discrimination, meaning that one should seek always to limit the scope of potential negative effects to those whose status is that of a legitimate target thus limiting the exposure of innocents to the negative effect.¹⁸ SOF in Phase Zero competing below the level of armed conflict take action in very limited instances making these principles much easier to attain than in large-scale combat operations. Since Phase Zero campaign activities are aimed at working by, with, and through Ally and Partner nation security forces, it produces a multilateral affect that promotes influence. By this concept, attempts at coercion

¹⁵ Walzer briefly establishes the concept of the legalist paradigm in his seminal work, see Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977). Walzer further refines this concept in later works as a response to academic discourse on his writing and again in the new millennium. See Michael Walzer, "The Moral Standing of States: A Response to Four Critics," *Philosophy & Public Affairs* 9, no. 3 (Spring 1980): 209–29; Michael Walzer, *Arguing about War* (New Haven & London: Yale University Press, 2004).

¹⁶ Walzer, *Arguing about War*.

¹⁷ *Casus belli* is the Latin of *cause for war* and *jus ad bellum* the Latin of *right to war*. Both terms have been used in just war tradition as early as St. Augustine's work on the subject.

¹⁸ This concept, limited for brevity, has a great deal of literature behind a recent discussion as to the finer points of who is justifiably liable in war and when. To see the latest comprehensive argumentation on the subject, see the forthcoming work, Jenkins, Robillard, and Strawser, *Who Should Die? The Ethics of Killing in War*.

could be an unjustified action under *jus in conflictus*—however, I will suggest that coercion may be morally permissible under certain conditions. Although not directly treated in this thesis, the use of cyber “armas” or other irregular means to achieve influence effects below the level of armed conflict might also be analyzed through the frame of the proposed expansion.

This thesis further argues that competition below the level of armed conflict can be morally justifiable, but even when justified it is still subject to moral criticism. We find this to be the case in this thesis’ treatment of Russia’s activities in Crimea and Eastern Ukraine. Chapter IV contains a detailed account of Russian actions below the level of armed conflict during the Euromaidan and its transition to and continuing armed conflict in Eastern Ukraine. It further concludes that Russia’s actions, even given the limited and rudimentary characterization of *jus ad conflictum* and *jus in conflictus* sketched in Chapter III, not only violated those principles—but exceeded the bounds of Phase Zero at their onset and should be regarded as coercion, political warfare, and armed conflict. A notable element of Russian activities in Ukraine, identified in Chapter IV, is the Russian Federation’s lexical use of just war theory thinking in media releases and talking points.¹⁹ This characteristic is further justification for SOF employment in Phase Zero for attributional purposes. Without clear and definitive proof of clandestine or covert activities below the level of armed conflict in an allied or partner nation, calling immoral actors to account and exposing their aggression is impossible—leaving the aggressor to leverage the just war tradition for utilitarian and immoral objectives unchallenged and the compromised nation limited options to respond legitimately or appeal for justified intervention on their behalf.

Finally, this work concludes that competition below the level of armed conflict conducted within the moral framework of *jus ad conflictum* and *jus in conflictus* might not

¹⁹ Josh Cohen, “Vladimir Putin Calls Ukraine Fascist, and Country’s New Law Helps Make His Case,” Reuters, May 14, 2015, <http://blogs.reuters.com/great-debate/2015/05/14/putin-ties-ukraines-government-to-neo-nazis-a-new-law-seems-to-back-him-up/>; Andrea Chalupa, “Putin’s Fabricated Claim of a Fascist Threat in Ukraine,” Forbes, April 4, 2014, <https://www.forbes.com/sites/realspin/2014/04/04/putins-fabricated-claim-of-a-fascist-threat-in-ukraine/>; Team of the Official Website of the President of Russia, “Vladimir Putin Answered Journalists’ Questions on the Situation in Ukraine,” Russian Government, President of Russia, March 14, 2014, <http://en.kremlin.ru/events/president/news/20366>.

constitute an “intervention” in the traditional just war sense. In Chapter IV, the proposed framework demonstrates that Russia’s actions constitute an unjustified intervention. This thesis further concludes that an overall increase in the U.S. whole-of-government approach to Phase Zero capability and capacity is warranted.²⁰ SOF employment in Phase Zero has the potential to facilitate positive outcomes in support of national objectives and the DOS’ foreign affairs and diplomatic mission’s integrated country strategies in a capacity that is morally preferable to other means. In light of this, this thesis also concludes that there is a strong possibility that this preferential status makes the ethical conduct of Phase Zero not only morally permissible but morally imperative.

²⁰ Whole of government approach refers to the idea that the government should apply unified and comprehensive solutions across agencies and departments.

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Thank you all for allowing me to stand on the shoulders of giants,

Scott W. Orr

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I. THINKING ABOUT COMPETITION BELOW THE LEVEL OF ARMED CONFLICT

On June 6, 1944, nearly 800,000 Allied Soldiers, Sailors, and Airmen participated in or supported landing operations in Normandy, France, to begin an offensive in Europe to defeat fascism. Warships, landing craft, air cover and support, tanks, artillery, and infantry seized the beaches in the largest invasion in history. This day, also known as D-Day, is etched into the collective memory of Americans through media and popular culture and reinforces popular perceptions of armed conflict—so much so that, when contemporary observers and practitioners think of our conception of warfare, we visualize large battles fought between competitors who are somewhat equally matched: tank on tank, uniformed men with guns set against other uniformed men with guns. In many respects, this example serves as the archetypal scenario of what joint military doctrine terms a major operation within a campaign during large-scale combat operations.¹

Such campaigns or major operations are conducted in six phases laid out in joint military doctrine.² See Figure 1 for a graphical depiction of the Continuum of Conflict. Contemporary military professionals use the phases to describe how the Department of Defense (DoD) moves from steady-state, or normalized diplomatic relations, to major combat operations, to the original normalized state once again.³ With D-Day in mind, consider the DoD’s phrase “Seize the Initiative” to describe Phase Two in the continuum.⁴ Phase Two is the point at which a combatant in an armed conflict conducts joint reception, staging, onward movement, and integration (JRSO&I) of major combat forces—this is the

¹ The U.S. DoD defines major operations in the Joint Publication 1-02 and 3-0 as, “1. A series of tactical actions (battles, engagements, strikes) conducted by combat forces of a single or several Services, coordinated in time and place, to achieve strategic or operational objectives in an operational area. 2. For noncombat operations, a reference to the relative size and scope of a military operation.” Joint Chiefs of Staff, *Joint Publication 1-02*. Joint Chiefs of Staff, *Joint Publication 3-0*.

² The U.S. DoD defines campaigns in Joint Publication 5-0 as, “A series of related major operations aimed at achieving strategic and operational objectives within a given time and space. See also campaign plan. (JP 5-0).” Joint Chiefs of Staff, *Joint Publication 5-0*.

³ Joint Chiefs of Staff.

⁴ Joint Chiefs of Staff.

beginning of what most people regard as an *actual* war in the continuum.⁵ This is the point in a campaign or major operation where conventional military forces conduct offensive maneuvers to quickly force an adversarial military force into a defensive posture and then set the conditions for the third phase, “dominate”—or in other words, *shock and awe*.⁶

Doubtless, there are times when conventional military capability is required to confront and succeed against a competitor with near-peer capabilities. However, there are also times when the United States could avoid the expense, effort, and potentially disadvantageous second and third order consequences by shaping the environment during peacetime, well before such a phase of conflict ever occurs.

⁵ Joint Chiefs of Staff; Joint Chiefs of Staff, *Joint Publication 3-0*.

⁶ Joint Chiefs of Staff, *Joint Publication 3-0*.

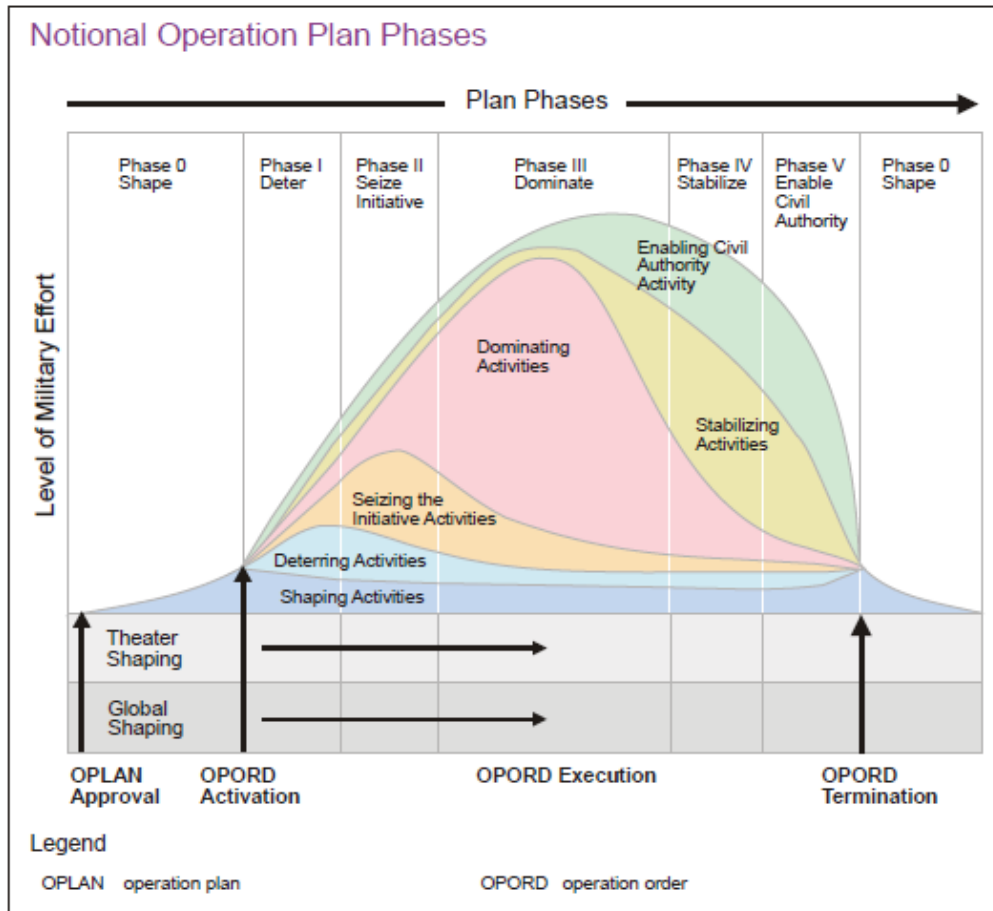


Figure 1. Notional Operation Plan Phases Overlaid on the Continuum of Conflict⁷

A. WHERE WE ARE

America may be nearing completion of its longest foreign war in history. While observers know it simply as the global war on terror or GWOT, the DoD now characterizes it as a global contingency operation.⁸ The war has entered its seventeenth year in Afghanistan and questions remain as to the ethics and morals of that conflict, not to mention when and how we can successfully end it, if ever. The war has endured through three presidential administrations and resulted in a significant expenditure of human-capital and

⁷ Source: Joint Chiefs of Staff, *Joint Publication 5-0*.

⁸ Scott Wilson and Al Kamen, "'Global War On Terror' Is Given New Name," *Washington Post*, March 25, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/24/AR2009032402818.html>.

resources. Arguably, one of the most important aspects of this war is the re-invigorated public debate and academic focus on the morality of war in general.⁹

Yet, while the world has been focused on the war in Afghanistan, it has also seen several destabilizing events that have, and will continue to have, profound impacts on inter-state and non-state interactions in the future. As the U.S. and its Allies have dutifully attempted to curb terrorism through combined counter terrorism operations, several state actors have undertaken significant operations to gain territory—actions that several authors like George Friedman had previously theorized were not likely to occur and therefore be an unlikely cause of contemporary war.¹⁰ Contemporary examples of this include expansionist ambitions and policy in the South China Sea practiced by China or the continued attempts by the Russian Federation to impose its will on former Soviet Satellite Republics. At present, China’s “reef enhancements” in the East China Sea have produced only greater international tensions that have the potential to cause serious instability. Russia’s actions since the early 1990s have also resulted in volatility, producing armed conflict in Transnistria, South Ossetia, Abkhazia, and Ukraine, to name only a few regions in conflict.

Collectively, these conflicts have rightly directed academic and media attention to special operations forces (SOF). Yet despite the attention, the application of SOF has not been adequately examined in the context of just war theory.¹¹ In addition, SOF have been characterized in superficial, rather than analytic, representations. For example, authors like Matthew Cole and Matthieu Aikins, as well as United Nations (UN) Delegates like Lydia

⁹ The quantity and impact of academic work on just war theory over the past 15 years has been significant. Two major figures in moral analytic philosophy, David Rodin and Jeff McMahan, are most responsible for the resurgence of research and, particularly, the development of so-called revisionist just war theory, as discussed below. See, in particular, McMahan, *Killing in War*. David Rodin, *War and Self-Defense* (GB: Clarendon Press, 2002), <https://doi.org/10.1093/0199257744.001.0001>. Countless others have followed in this revisionist school, some of which will be engaged with below, as relevant to this thesis.

¹⁰ George Friedman, “Beyond the Post-Cold War World,” Stratfor, April 2, 2013, <https://worldview.stratfor.com/article/beyond-post-cold-war-world>.

¹¹ Daniel C. Hodne, “The Morality of Intervention by Waging Irregular Warfare,” *Military Review*, September-October 2014, http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20141031_art016.pdf.

Canaan, portray SOF as an indiscriminate killing machine that produces civilian casualties on a wide-scale.¹² Canaan views SOF as tools used and applied only by hawkish political leaders, suggesting the use of special operations constitutes a temporary suspension of the moral precepts that underpin law.¹³ Another similar distortion appears to come from the notion that SOF conduct secret warfare that, by definition, would violate the sovereignty of other nations.¹⁴ Given the sometimes-opaque nature of SOF, these are easy misconceptions to perpetuate.¹⁵

However, despite such depictions in popular discourse, and because of SOF's small scale and precise capabilities, SOF are purpose-designed for limited-objective outcomes that inherently bound the scope of violence.¹⁶ The heightened level of precision, focus,

¹² Matthieu Aikins, "US Special Forces May Have Gone On a Murder Spree in Afghanistan—Did the Army Cover It Up?," *Nation*, September 2, 2015, <https://www.thenation.com/article/us-special-forces-may-have-gone-on-a-murder-spree-in-afghanistan-did-the-army-cover-it-up/>; Matthew Cole, "The Crimes of SEAL Team 6," *Intercept*, January 10, 2017, <https://theintercept.com/2017/01/10/the-crimes-of-seal-team-6/>.

¹³ Lydia Canaan, "Fighting Terrorism Without Violating Human Rights," *Huffington Post*, March 21, 2016, http://www.huffingtonpost.com/lydia-canaan/fighting-terrorism-withou_b_9513034.html.

¹⁴ Andrew J. Bacevich, "What Are U.S. Forces Doing in Yemen in the First Place?," *Atlantic*, February 8, 2017, <https://www.theatlantic.com/international/archive/2017/02/yemen-raid-trump/516024/>; Richard Leiby, "U.N.: U.S. Drone Strikes Violate Pakistan Sovereignty," *Washington Post*, March 15, 2013, https://www.washingtonpost.com/world/asia_pacific/un-us-drones-violate-pakistan-sovereignty/2013/03/15/308adae6-8d8a-11e2-adca-74ab31da3399_story.html; Alfred W. McCoy, "You Must Follow International Law (Unless You're America)," *Nation*, February 24, 2015, <https://www.thenation.com/article/you-must-follow-international-law-unless-youre-america/>; Micah Zenko, "When the U.S. Doesn't Respect Other Countries' Sovereignty," *Atlantic*, May 31, 2012, <https://www.theatlantic.com/international/archive/2012/05/when-the-us-doesnt-respect-other-countries-sovereignty/257889/>.

¹⁵ Irregular conflict is the author's term to describe competitions between state or non-state actors in which none of the actors could accurately be depicted as either combatants or violent organizations. This definition allows the possibility that one or more may become so if the operating environment crosses a violent threshold fitting the Department of Defense's doctrinal definition of irregular warfare, which is, "A violent struggle among state and non-state actors for legitimacy and influence over the relevant population(s). Also called IW." Joint Chiefs of Staff, *Joint Publication 1-02*.

¹⁶ "ARSOF has a direct military lineage of conducting UW, which dates back more than 50 years to the World War II (WWII) Office of Strategic Services (OSS). The United States has conducted UW in support of resistance movements, insurgencies, and ongoing or pending conventional military operations. It has operated by, with, or through irregular forces against a variety of state and nonstate opponents. Such sensitive operations are a high-value component and a specific application of the military instrument of national power. ARSOF UW—properly employed within the context of all such power effectively integrated—is more relevant than ever in the 21st century international environment." Department of the Army, *FM 3-05.130, Army Special Operations Forces Unconventional Warfare* (Washington, DC: Headquarters, Department of the Army, 2008).

and oversight required for SOF operations reduces the potential for collateral damage and other disadvantageous unintended results. This thesis intends to explore, and argue in the affirmative for, the moral utility of SOF operations as a means to prevent unnecessary loss of life prior to, during, and post-armed conflict scenarios.¹⁷ Contrary to the popular misconceptions attributed to them, this thesis argues that SOF represent an ethical expression of and, in fact, an expansion of military capability bound by just war theory in an era of increasingly irregular conflict.

B. HOW WE GOT HERE

After September 11, 2001, the U.S. shifted its strategy in countering terrorism from a reactionary to a more proactive focus.¹⁸ A little longer than a month after the attack on New York, U.S. Special Forces (SF) were on the ground in Afghanistan in the initial contact phase of what the U.S. Army calls, unconventional warfare.¹⁹ During this period, Green Berets infiltrated Afghanistan from neighboring countries, located factions that had been fighting the Taliban, formally assessed which had values compatible with U.S. foreign policy objectives, and provided the information to U.S. Government decision-makers.²⁰ Shortly thereafter, the U.S. decided to support the Northern Alliance by providing SF Advisors to accompany the Alliance and facilitate their offensive operations to over-throw the Taliban. Of course, once the U.S. began supporting offensive operations through SF advisors, the operation became an armed intervention. Just war theory and ethical observers have the framework, the lexicon, and a wide body of ethical considerations to determine the moral legitimacy of such an intervention.

¹⁷ Moral utility is the author's term to describe the comparative advantage, specifically in terms of morality, using one military method versus another to achieve the desired military or political endstate.

¹⁸ Valentina Taddeo, "U.S. Response to Terrorism: A Strategic Analysis of the Afghanistan Campaign," *Journal of Strategic Security* 3, no. 2 (May 2010), <https://doi.org/10.5038/1944-0472.3.2.3>.

¹⁹ The Department of Defense defines unconventional warfare as, "Activities conducted to enable a resistance movement or insurgency to coerce, disrupt, or overthrow a government or occupying power by operating through or with an underground, auxiliary, and guerrilla force in a denied area. Also called UW. (JP 3-05.1)" Joint Chiefs of Staff, *Joint Publication 1-02*.

²⁰ National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report : Final Report of the National Commission on Terrorist Attacks upon the United States* (Washington, DC: National Commission on Terrorist Attacks upon the United States, 2004).

While SOF, specifically SF, are proficient in special operations tasks like unconventional warfare, events like Afghanistan in October 2001 represent an outcome that is not typical of indirect tasks conducted in what the SOF community and DoD call, Phase Zero.²¹ The preponderance of SOF effort is applied globally in an effort to train, advise, and assist other countries to secure themselves and prevent instability. These types of activities and operations are designed to reinforce a nation's ability to guarantee its own sovereignty, an ability which the U.S. and other Western nations believe has the best possibility to reduce the potential for armed conflict and to limit the scope and duration of armed conflict when it arises.²²

After years of well-constructed and thorough discourse on just war theory, moral realists and observers have fine-tuned its structure to provide an ethical boundary to modern armed conflict.²³ The world seems to understand, albeit sometimes after a war has started, when and why observers should view a particular war as morally justified or unjustified, and further when the conduct of that war is similarly just or unjust. There are clearly defined examples of just wars upon which most military philosophers and ethicists agree. For example, the Gulf War. After Saddam Hussein invaded neighboring Kuwait in 1991, the international community used the vernacular of just war theory to assemble a coalition to conduct an armed intervention to expel the Iraqi Armed Forces during Operation DESERT SHIELD and DESERT STORM.²⁴ Conversely, there are examples that are less clear and far more contentious, like the invasion of Iraq in 2003 during Operation IRAQI FREEDOM.²⁵ International actors, led by the United States, again used

²¹ Petit, *Going Big by Getting Small*.

²² Clinton, "A National Security Strategy of Engagement and Enlargement," 1994; Clinton, "A National Security Strategy of Engagement and Enlargement," 1995; Clinton, "A National Security Strategy of Engagement and Enlargement," 1996; Clinton, "A National Security Strategy for a Global Age"; Bush, "The National Security Strategy of the United States of America"; Bush, "National Security Strategy 2006"; Obama, Barack, "National Security Strategy," May 2010; Obama, Barack, "National Security Strategy," February 2015.

²³ Walzer, *Just and Unjust Wars*.

²⁴ William V. O'Brien, "Desert Storm: A Just War Analysis," *St. John's Law Review* 66 (1992): 797; Michael Walzer, *Michael Walzer on Just War in the Gulf War - Video*, 2008, <http://bigthink.com/videos/michael-walzer-on-just-war-in-the-gulf-war>.

²⁵ Jeff McMahan, "Unjust War in Iraq" (Rutgers University, 2004), <http://jeffersonmcmahan.com/wp-content/uploads/2012/11/Unjust-War-in-Iraq.pdf>.

the arguments of just war theory to justify the invasion. Experts familiar with just war theory gave pause from the start, but after the war began and new information became available, observers subjected the facts to moral scrutiny and most agree that the armed conflict did not meet the standard conditions of just war theory.²⁶

While these examples provide opportunities for moral criticism before, during, and after armed conflict, they represent the traditional embodiment of war in the most conventional of senses. After all, just war theory defines the moral parameters in which going to war is acceptable and frames the moral obligations of conducting an ongoing war ethically.²⁷ How then, do we morally evaluate competition below the level of armed conflict or actions conducted by SOF within either the conventional armed conflict or irregular conflict spectrums? This question has all too often gone unanswered.

Ethical theories of conflict by both state and non-state actors are usually predicated on the assumption that the conflict by its nature is conventional, or at the very least *armed*. As such, academics, policymakers, and observers have paid significant attention to defining the moral parameters for ethical armed conflict. Many of these analyses assume that a nation is attempting to engage in a justified armed conflict executed by overt or conventional military forces. The moral utility derived by the application of SOF prior to, during, and after an armed conflict is thus given very little analysis or consideration outside of the United States Special Operations Command (SOCOM).

²⁶ McMahan. I will not rehash the full arguments for or against the justification conclusions of either of these wars; doing so would exceed the scope of this thesis. I raise them, rather, to demonstrate two recent cases of armed conflict involving the U.S. about which most just war theorists analyze using the standards of just war theory yet come to starkly different conclusions.

²⁷ Walzer, *Just and Unjust Wars*; Walzer, *Arguing about War*; Jenkins, Robillard, and Strawser, *Who Should Die? The Ethics of Killing in War*.

Just war theory, its recent revisions, and other ethical models identify when and how a state or non-state entity can enter and execute justified armed conflict.²⁸ By framing these principles against the applicable core tasks and capabilities of SOF, it is possible to illuminate key deductions about the application of SOF in conventional warfare. Further, if we apply some of these principles to irregular conflict and especially to Phase Zero operations, we may be able to sufficiently frame pre-conflict influence operations and begin to describe the ethics that bound such actions.²⁹ Of course, this framing could lead to a preliminary determination on whether or not these types of SOF employment are morally permissible. If so, we may then begin a meaningful discussion on how such SOF operations might fall within the permissible spectrum and how Phase Zero strategies might be operationalized to increase their moral utility.

An ethical model or theory that provides a lexicon for further discussion on SOF employment prior to, during, and after war might provide valuable insights, especially when viewed from a policy perspective. Current United States Code, specifically Titles 10 and 22, creates a tangled web of authority that inhibits the effective application of SOF prior to armed conflict. United States Code does not clearly grant primacy to either the DoD or the Department of State (DOS). If, however, it can be shown that the application of SOF does indeed preserve flexibility, increase moral utility, and has the potential to prevent armed conflict from even occurring, then United States Code and policy could be written to promote and accommodate the more efficient use of the irregular capability provided by SOF.

²⁸ In the current just war theory landscape, the traditional “orthodox” view is represented by Walzer, while the likes of McMahan and Rodin, noted above, are the flagbearers for the revisionist school of just war theory. More recently, in response to the flood of revisionist work, we’ve seen both some defenses of the Walzerian traditional view (see Yitzhak Benbaji, “The War Convention and the Moral Division of Labour,” *Philosophical Quarterly* 59, no. 237 (September 22, 2009): 593–617, <https://doi.org/10.1111/j.1467-9213.2008.577.x>.) and Michael Skerker, *The Moral Status of Combatants* (Oxford: Oxford University Press, Forthcoming). Additionally, some have pushed for a *tertium quid* approach to the binary traditional/revisionist dichotomy. See, for example, Seumas Miller, *Shooting to Kill: The Ethics of Police and Military Use of Lethal Force*, 2016. Across all such approaches to just war theory, however, the point remains: clear principles are articulated against which various military operations can then be judged, including SOF capabilities.

²⁹ The U.S. DoD defines phase zero as, “Shape (Phase 0). Joint and multinational operations—inclusive of normal and routine military activities—and various interagency activities are performed to dissuade or deter potential adversaries and to assure or solidify relationships with friends and allies.” Joint Chiefs of Staff, *Joint Publication 5-0*.

C. IDENTIFYING THE PROBLEM

Just war theory describes when armed conflict is justifiable and defines the considerations for the moral conduct of warfare. Given popular misconceptions, moral realists of our time have not yet juxtaposed the application of SOF in irregular conflict with just war theory and its contemporary revisions. An analysis of SOF operations within the context of just war theory is required to determine whether there is a particular moral utility to the employment of SOF.

If such a determination exists, decision and policymakers, their staffs, analysts, and observers may then possess a more accurate picture of flexible deterrent or response options short of armed intervention.

D. LITERATURE REVIEW

This thesis is predicated upon three main disciplines of academic thought: philosophy, political science, and military science. The core of research consists of fundamental principles from just war theory, its recent revisionist strains, policy analysis, and military doctrine. Just war theory and its contemporary revisions form the conceptual framework through which to analyze the application of SOF. Military frameworks supported by doctrine will augment research on just war theory to illuminate similarities and dissimilarities in the conceptual nature of irregular conflict. Comparative politics and military science form the experiential elements of the study. Reviewing case studies of the application of SOF through a comparative method will highlight key successes and failures with respect to conventional and non-conventional military operations and their effects on the domestic politics and political institutions of a country in conflict.

Just war theory traditionally encompasses two main criteria: the justifications for going to war—*jus ad bellum*—and the just conduct of war—*jus in bello*.³⁰ The essential

³⁰ Walzer, *Just and Unjust Wars*. More recently, the just war theory canon has been further expanded to include conceptual terrain such as just conduct after war (*jus post bellum*) and just terms for when to end a war (*jus ex bello*). On the former, see Brian Orend, “Jus Post Bellum,” *Journal of Social Philosophy* 31, no. 1 (2000): 117–137; Brian Orend, *The Morality of War* (Peterborough, Ont., 2006). On the later, see the seminal work by Darrel Moellendorf, “Jus Ex Bello,” *Journal of Political Philosophy* 16, no. 2 (June 2008): 123–36, <https://doi.org/10.1111/j.1467-9760.2008.00310.x>.

concepts of *jus ad bellum* relevant to the application of SOF are the legalist paradigm, prevention, and preemption. These principles in traditional just war theory, as well as contemporary revisionist approaches, are predicated on the assumption of a conventional armed conflict or major operation following a satisfactory justification.³¹ Unfortunately, just war theory does not specifically identify conditions in which the application of SOF, specifically in Phase Zero of the continuum of conflict, are morally permissible.³²

Jus in bello, or justice in war, represents the body of just war theory that specifies the parameters for ethical conduct within warfare.³³ The self-imposed restraints described by *jus in bello* are based on the twin principles of proportionality and distinction.³⁴ Proportionality demands that the good gained by any given military attack must be proportionate to the harm done by that attack, while distinction requires that only combatants are intentionally targeted in warfare.³⁵ The idea of proportionality applies to all forces in a given conflict, but again, there are few examples in relevant literature that explore the application of SOF within this framework. Specifically, the idea of proportionality has not been applied to irregular conflict in phase zero and phase one executed by SOF. Contemporary revisionist approaches of just war theory that focus on concepts of individual responsibility speak indirectly to the use of SOF in operations prior

³¹ The Department of Defense defines a major operation in Joint Publication 1-02 as, “A series of tactical actions (battles, engagements, strikes) conducted by combat forces of a single or several Services, coordinated in time and place, to achieve strategic or operational objectives in an operational area.” Historically, the term for a major military engagement using combat forces was called high-intensity conflict, then full-spectrum operations, followed by major combat operations, and now major operations. The new term encompasses irregular and conventional warfare actions. Joint Chiefs of Staff, *Joint Publication 1-02*.

³² Department of Defense defines phase zero (shape) in Joint Publication 5-0 as, “Joint and multinational operations— inclusive of normal and routine military activities—and various interagency activities are performed to dissuade or deter potential adversaries and to assure or solidify relationships with friends and allies.” And phase one (deter) as, “The intent of this phase is to deter undesirable adversary action by demonstrating the capabilities and resolve of the joint force. It includes activities to prepare forces and set conditions for deployment and employment of forces in the event that deterrence is not successful.” Joint Chiefs of Staff, *Joint Publication 5-0*.

³³ Walzer, *Just and Unjust Wars*.

³⁴ Walzer.

³⁵ The principle of military necessity is a corollary that often falls out of the proportionality constraint; while noncombatant immunity is the proper extension of distinction.

to armed conflict or during any phase of irregular conflict, and will be explored within this thesis.³⁶

United States Code has three distinct titles that form the foundation of the legal basis of our interaction with other nations during peacetime and war. Title 10 outlines the authorities of the DoD, Title 22 the authorities of the DOS, and Title 50 the authorities in war and national defense.³⁷ The legal authorities established by these titles form a tangled web of responsibility prior to, during, and after an armed conflict. The application of SOF in support of the proponents of these titles has been addressed in literature, but not treated sufficiently with respect to the preservation of moral utility and the inherent flexibility these applications can cultivate.

SOF doctrine and employment in irregular conflict intrinsically limit the scope of conflict between state and non-state competitors. Irregular conflict typically occurs within Phase Zero of the continuum of conflict.³⁸ Military doctrine and SOF operating principles speak indirectly to *jus ad bellum* in this respect, but the moral conclusions that should be drawn from *jus in bello* for these types of military employments have not been sufficiently addressed. The application of SOF in Phase Zero employs small formations that may produce outsized strategic effects with comparatively few military resources.³⁹ Further, analyses of SOF employment in Phases Three through Five of conventional warfare have not distinguished between the collateral damages caused by large combat formations' units of action as opposed to those caused by SOF units of action.⁴⁰

³⁶ McMahan, *Killing in War*.

³⁷ "U.S. Code: Title 10 - Department of Defense," 101–2926 § (1956), <https://www.law.cornell.edu/uscode/text/10>; "U.S. Code: Title 22 -Foreign Relations and Intercourse," 22, accessed August 7, 2017, <https://www.law.cornell.edu/uscode/text/22>; "U.S. Code: Title 50 - War and National Defense," 50, accessed August 7, 2017, <https://www.law.cornell.edu/uscode/text/50>.

³⁸ Joint Chiefs of Staff, *Joint Publication 1-02*; Joint Chiefs of Staff, *Joint Publication 5-0*.

³⁹ Petit, *Going Big by Getting Small*.

⁴⁰ An example of a U.S. Army conventional unit of action is a brigade combat team (BCT) which encompasses around 4500-7000 Soldiers. Conversely, a U.S. Army Special Operations Command unit of action is a Special Forces Operational Detachment Alpha (SFODA) which is normally twelve Green Berets.

The next chapter discusses in some detail how SOF support objectives during armed conflict. Specifically, the chapter directly speaks to how SOF achieve morally beneficial effects during phases of the continuum of conflict that should be considered large-scale combat operations or major campaigns. The discussion focuses on traditional and revisionist just war logic to demonstrate that large-scale combat forces realize significant moral improvements when SOF precision and nuance are applied in support of objectives during armed conflict.

Chapter III illuminates critical shortcomings in just war theory when applied to activities below the level of armed conflict—ultimately arguing for an expansion to the theory itself. Principally, the chapter addresses the need for clarity and understanding of how SOF interaction short of overt warfare can produce Phase Zero results that limit the scope of violence and preclude subsequent phases of conflict. The chapter also establishes that competition below the level of armed conflict can be morally justified and that it is furthermore subject to moral criticism. Additionally, it articulates several initial considerations for the moral framing of SOF applied below the level of armed conflict and proposes expansions to just war theory to encapsulate irregular conflict in Phase Zero.

In Chapter IV, this thesis examines Russia’s involvement in Crimea and Eastern Ukraine through the perspective of the proposed just war theory expansion. The aim is to highlight key deductions based on the application of several of the principles offered in Chapter III. The chapter demonstrates just war theory’s inadequacy in framing Russia’s activities below the level of armed conflict while juxtaposing its efficacy after the transition from Phase Zero to armed conflict in Phase Two. This chapter also reveals the possibility of several implications on *jus ad bellum* and *jus in bello* considerations that arise from the proposed expansion. Specifically, it discusses potential SOF applications that could have run counter to the aggression and how they might be justified under the framework of the expansion.

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II. SOF IN SUPPORT OF OBJECTIVES DURING ARMED CONFLICT

This chapter discusses the application of just war thinking to the phases in the continuum of conflict that include armed conflict. From this perspective, it offers a glimpse of the moral implication of SOF's unique extension of the ethical principles established in just war theory that can limit the unnecessary loss of life during and after large-scale combat operations and major campaigns. When the traditional elements of *jus ad bellum* are met, it could be challenging to argue that there is (or has existed) a more moral war-fighting force than the contemporary U.S. military. It is evident by the DoD's updating and crafting of the Law of Armed Conflict (LOAC), better known by its most debated section—the Rules of Engagement (ROE)—the DoD, and most of the U.S. Government, have wholeheartedly embraced just war theory vis-à-vis the widespread adoption of the principles of *jus ad bellum* in decisions to go to war and the *jus in bello* principles of proportionality and distinction in its waging of war.⁴¹ Additionally, the use of precision guided munitions (PGMs), new technologies, and updated targeting doctrine have resulted in more accurate and precise conventional military operations. The combined result is some of the lowest rates of casualties and collateral damages resulting from warfare in human history.⁴² These advances all share a similar organizing principle: the goal of killing only those who meet the conditions for classification as a combatant and preserving the life of innocents.

Yet, warfighting remains a messy business that results in human casualties, regardless of advanced capabilities. While unnecessary human casualties have been more limited in contemporary U.S. warfare, they have yet to be completely eradicated.⁴³ Nonetheless, during modern large-scale combat operations in which two military powers engage each other conventionally, the overall human loss has been minimized to an

⁴¹ Department of Defense, *Law of War Manual*.

⁴² Joshua S. Goldstein, "Think Again: War," *Foreign Policy* (blog), August 15, 2011, <https://foreignpolicy.com/2011/08/15/think-again-war/>; PRIO, "Data on Armed Conflict," accessed August 30, 2017, <https://www.prio.org/Data/Armed-Conflict/?id=348>.

⁴³ Goldstein, "Think Again"; PRIO, "Data on Armed Conflict."

unprecedented low.⁴⁴ The modern U.S. military has been able to identify, target, and neutralize traditional military threats quickly and efficiently without a large potential for additional damage occurring. In that regard, traditional just war theory's *jus in bello* principles provide clear ethical evaluation criteria for the engagement of military targets in conventional military operations.

Irregular warfare, however, offers a more difficult challenge to both *jus in bello* criteria and the measurement of human casualties. PGMs and other advanced capabilities help to reduce negative second and third order effects, but the civilian casualty rate likely remains higher in irregular warfare than that of traditional military operations. Contemporary revisionist just war theorists have expanded the moral boundaries of traditional just war principles along several angles. This new approach to the moral thought of just war theory may provide a better framework for the conduct of irregular warfare operations like counterinsurgency (COIN).⁴⁵ However, COIN is difficult and complex for many reasons, one of which is the challenge of identifying friend from foe in the absence of conventions of identification that are neither recognized nor implemented by insurgents.

Revisionist just war thought has advanced the idea of individual liability as central to the ethics of war in determining who should rightfully be killed in combat.⁴⁶ As a result, individual actors in war, and their individual rights and legitimate claims on others, weigh heavily in contemporary debates over who should legitimately be targeted in war and other *jus in bello* practices.⁴⁷ Many critics regard this revisionist conceptual framework as too restrictive to effectively fight a war, preferring instead to maintain the traditional view on

⁴⁴ Goldstein, "Think Again"; PRIO, "Data on Armed Conflict."

⁴⁵ The U.S. DoD Defines counterinsurgency in Joint Publication 1-02 as, "Comprehensive civilian and military efforts designed to simultaneously defeat and contain insurgency and address its root causes. Also called COIN. (JP 3-24)." Joint Chiefs of Staff, *Joint Publication 1-02*.

⁴⁶ See McMahan, *Killing in War*. Also see the litany of follow on work: Seth Lazar, "The Responsibility Dilemma for Killing in War: A Review Essay," *Philosophy & Public Affairs* 38, no. 2 (2010): 180–213; Jenkins, Robillard, and Strawser, *Who Should Die? The Ethics of Killing in War*; Helen Frowe, *Defensive Killing: An Essay on War and Self-Defence* (Oxford: Oxford University Press, 2014); Helen Frowe and Gerald Lang, *How We Fight: Ethics in War* (Oxford: Oxford University Press, 2014). among many others.

⁴⁷ See, for example, Jenkins, Robillard, and Strawser, *Who Should Die? The Ethics of Killing in War*. Which explores this question extensively by a range of recent revisionist scholars.

who can rightly be intentionally killed in warfare.⁴⁸ On the traditional, Walzerian view, a simple division between combatant and noncombatant grounded on the mutual posing of a threat forms the basis for justified *jus in bello* actions. Revisionists counter, however, that merely posing a threat cannot be sufficient grounds for being a liable target, as has long been held in just war theory, for there are many in war, and outside of war, who pose a morally justified threat. As such, those posing a morally justified threat have thus done nothing to surrender their right to not be killed, and should not be morally liable to be killed in war. Indeed, this question of individual liability has found its way to the center of the present just war theory debate.⁴⁹ The question of who should die is an important one—but it is a question that, militarily speaking, can be even more difficult to answer than philosophically. In other words, even if we were to have a widely accepted moral framework it would add such a degree of effort to military operations that could result in a strong potential to reduce the overall efficiency of the effort and thus unnecessarily prolong the war.

Despite the difficulties posed by irregular warfare, the U.S. military does an admirable job, by way of the LOAC and ROE, in attempting to lower the levels of collateral damage and civilian casualties. In addition to using administrative solutions like the ROE and policies, the U.S. military updated its operating doctrine to achieve more precise targeting procedures that refine the process to increase the accuracy of strikes and other offensive operations.⁵⁰ Specifically, SOF have made significant contributions to the targeting process, particularly through COIN operations in Afghanistan—which have brought its operations into closer alignment with the revisionist just war theory framework and provided insight into the realm of what is actually possible in future conflicts.

⁴⁸ Seth Lazar argues that the revisionist approach is too restrictive, thereby rendering just warfare impossible. Lazar, however, agrees with the main lines of criticism that revisionists press against traditional just war theory. See Lazar, “The Responsibility Dilemma for Killing in War.” For examples of those who argue for a return to the simple, traditional binary approach to targeting, see Benbaji, “The War Convention and the Moral Division of Labour.” Also see Michael Skerker, *The Moral Status of Combatants* (Oxford: Oxford University Press, Forthcoming).

⁴⁹ Jenkins, Robillard, and Strawser, *Who Should Die? The Ethics of Killing in War*.

⁵⁰ Joint Chiefs of Staff, *Joint Publication 3-60, Joint Targeting*, 1st ed. (Suffolk, VA: United States Department of Defense, United States Joint Forces Command, Joint Warfighting Center, Joint Doctrine Group, 2013).

A. LARGE-SCALE COMBAT OPERATIONS

Whether regular or irregular in nature, conventional military forces deployed to conduct large-scale combat operations will likely increase their moral utility by employing SOF. In many respects, militaries may well choose to increase their moral utility for realist or pragmatic utilitarian reasons, as opposed to purely principled reasons. Regardless, in the contemporary operating environment, there is a reasonable expectation that future warfighting will be more irregular in nature.⁵¹ With respect to large-scale combat operations, the combined presence of increased globalization, international media, and the prevalence of cellular hand-held media devices amplifies the negative utilitarian consequences of acting immorally. In other words, organizational military ethics may often not be based on pure, altruistic moral reasons.⁵² Rather, a desire to accomplish the mission and win the war may drive these ethical principles, and specifically, those moral concerns emphasized by revisionist just war theory, into a *de facto* synchronization with military operations in an effort to best guarantee success.⁵³

The joint operational phasing of warfare describes six different phases within the continuum of conflict.⁵⁴ According to the model, if the U.S. fails to influence in Phase Zero or to deter in Phase One—then we are faced with the potential of large-scale combat operations in the beginning of Phase Two. Assuming that options other than war have failed, and that the armed conflict meets the moral requirements of traditional or revisionist just war theory, and, further, that the war will be fought using large-scale combat forces, then it becomes possible to morally assess the employment of SOF in support of conventional objectives through the phases of the continuum of conflict.

⁵¹ Robert A. Johnson, “Predicting Future War,” *Australian Defence Force Journal*, no. 196 (2015): 70.

⁵² Jonathan D. Kingsley, “Special Forces Values: How the Regiment’s Ethical Framework Influences Its Organizational Effectiveness” (Naval Postgraduate School, 2017).

⁵³ Kingsley.

⁵⁴ See Figure 1, Notional Operation Plan Phases overlaid on the Continuum of Conflict.

1. Phase Two: Seize the Initiative

When the conventional military is ordered to mobilize and deploy to an armed conflict, there are many planning considerations and factors that are analyzed prior to the execution of actual combat operations.⁵⁵ Updating facts and assumptions is critical during the pre-deployment planning and preparations. In an ideal Phase Two situation, a conventional invasion force would know what ports to use, where critical adversary defensive systems are located, and the disposition of the adversary's main combat forces. This type of information would be used to determine appropriate risk levels and which critical adversary defenses should be neutralized or avoided altogether. By accurately determining these factors, a military is able to properly target adversarial military targets, as well as correctly apply the doctrine of double effect prior to the introduction of a major operation or campaign.

SOF excel in facilitating a comprehensive understanding of the environment in which operations are planned to occur. Returning to the Allied landings in Normandy, noted in Chapter I, envision modern SOF and how they might have enabled such an operation. Perhaps Navy Sea, Air, and Land Teams (SEALs) might have conducted special reconnaissance (SR) to determine which ways ashore were suitable for landing craft and determine which sections of beachhead were the least defended.⁵⁶ Also, Army SF might have conducted SR behind enemy lines in France to determine where main Nazi defensive systems and forces were located as well as their capability to counter-attack potential invasion points. Army Special Operations Civil Affairs (CA) likely would have conducted civil reconnaissance to determine if there were any civilian capabilities that could be temporarily-disabled to provide an advantage to Allied forces, tasks the OSS actually

⁵⁵ These considerations and factors are captured in several joint and service-branch specific planning processes. These military planning processes are codified in joint and service-branch specific doctrine and taught at mandatory military training and education courses. Joint Chiefs of Staff, *Joint Publication 3-0*; Joint Chiefs of Staff, *Joint Publication 5-0*.

⁵⁶ The U.S. DoD defines special reconnaissance in Joint Publication 1-02 as, "Reconnaissance and surveillance actions conducted as a special operation in hostile, denied, or diplomatically and/or politically sensitive environments to collect or verify information of strategic or operational significance, employing military capabilities not normally found in conventional forces. Also called SR. (JP 3-05)." Joint Chiefs of Staff, *Joint Publication 1-02*.

performed.⁵⁷ For example, locate all the phone lines in and out of Erwin Rommel's headquarters and cut them to reduce the defender's ability to communicate with his subordinate forces. Army Psychological Operations (PSYOP) likely would have created a desired perception using disinformation or a military deception (MILDEC) campaign to convince the Germans that the invading force might be heading to a different beach.⁵⁸ Air Force SOF (AFSOF) probably would have been responsible for controlling close air support (CAS) and personnel recovery (PR) operations.⁵⁹

Examining the employment of SOF from this perspective, it is clear that without these types of capabilities prior to and during Phase Two, we should not expect to approach compliance with the strict ethical demands that a revisionist view of *jus in bello* entails. Taking the described scenario provided from 1944 to the current operating environment, we might also infer a much lower tolerance for collateral damage than would have existed in 1944. Although the OSS did achieve operations similar to the hypotheticals described, today's SOF are more precise and nuanced in their ability set favorable conditions for success while reducing both combatant and non-combatant casualties.

⁵⁷ S. J. Lewis, *Jedburgh Team Operations in Support of the 12th Army Group, August 1944* (Fort Leavenworth, Kan.: Combat Studies Institute, U.S. Army Command and General Staff College, 1991), <https://usacac.army.mil/cac2/cgsc/carl/download/csipubs/lewis.pdf>.

⁵⁸ This obviously occurred when the Allies used an inflatable division to convince the Germans of an imminent invasion at Pas d'Calais. Although at the time PYSOP was not a branch in the military—which the same is true of AFSOF, CA, SEALs, and SF. The U.S. DoD defines desired perception in Joint Publication 1-02 as, “In military deception, what the deception target must believe for it to make the decision that will achieve the deception objective. (JP 3-13.4)” Joint Chiefs of Staff, *Joint Publication 1-02*. The U.S. DoD defines military deception in Joint Publication 1-02 as, “Actions executed to deliberately mislead adversary military, paramilitary, or violent extremist organization decision makers, thereby causing the adversary to take specific actions (or inactions) that will contribute to the accomplishment of the friendly mission. Also called MILDEC. (JP 3-13.4)” Joint Chiefs of Staff.

⁵⁹ The U.S. DoD defines close air support in Joint Publication 1-02 as, “Air action by fixed- and rotary-wing aircraft against hostile targets that are in close proximity to friendly forces and that require detailed integration of each air mission with the fire and movement of those forces. Also called CAS. See also air interdiction. (JP 3-0)” Joint Chiefs of Staff, *Joint Publication 1-02*. The U.S. DoD defines personnel recovery in Joint Publication 1-02 as, “The sum of military, diplomatic, and civil efforts to prepare for and execute the recovery and reintegration of isolated personnel. Also called PR. See also combat search and rescue; evasion; personnel; recovery; search and rescue. (JP 3-50)” Joint Chiefs of Staff.

2. Phase Three: Dominate

During Phase Three of the continuum of conflict, large-scale combat forces seek to overwhelm the adversary and force capitulation or some other negotiated outcome.⁶⁰ In conventional warfare, this requires intelligence to drive major operations as well as precision operations to degrade essential adversary capabilities and infrastructure.⁶¹ In short, this is the phase of the war in which the targeted adversarial military forces sustain engagement, are reduced, and finally defeated.

When conventional military forces are faced with an insurgency-based adversary, targeting becomes more complex and requires increased precision. SOF bring a nuanced capability that facilitates effectiveness and compliments the capabilities the conventional military brings to bear to overwhelm and reduce enemy forces. When interoperating during large-scale combat operations, the military describes the complimentary effects as an interdependence between SOF and conventional forces.⁶² SOF achieve their contributions supporting conventional military objectives by working through indigenous people and organizations as well as conducting precision targeting operations.⁶³ SOF use much smaller footprints to conduct SR and DA operations that contribute to the success in identifying complete threat networks, thereby allowing conventional military battle-space owners to make decisions with comprehensive targeting information.

Whether U.S. decision makers elect to deploy conventional military forces for conventional or irregular large-scale combat operations, they will likely benefit from comprehensive targeting information. This decreases the likelihood of unintended

⁶⁰ Joint Chiefs of Staff, *Joint Publication 3-0*; Joint Chiefs of Staff, *Joint Publication 5-0*.

⁶¹ Joint Chiefs of Staff, *Joint Publication 3-60*, 3–6; United States Army Special Operations Command, “USASOC 2035: Communicating the ARSOF Narrative and Setting the Course to 2035,” April 2017, 201983-000; United States Army Special Operations Command, “ARSOF 2022,” *Special Warfare*, no. Special Edition (May 2014): 32; United States Army Special Operations Command, “ARSOF 2022 Part 2,” *Special Warfare*, no. Special Edition (August 2014): 32.

⁶² United States Army Special Operations Command, “ARSOF 2022”; United States Army Special Operations Command, “ARSOF 2022 Part 2.”

⁶³ United States Army Special Operations Command, “USASOC Strategy 2035.”

consequences that might harm innocents or result in collateral damage that would be counterproductive to victory or a lasting peace.

3. Phase Four: Stabilize

During the fourth phase of the continuum, military forces seek to move away from sustained combat operations and begin stability operations.⁶⁴ Stabilization may be the most difficult phase in the continuum of conflict. Given the resources and time required it is challenging even when it is executed correctly, and whether knowingly or unknowingly—criticisms of the U.S. approach to Afghanistan and Iraq appear to center on the military’s ability to successfully conduct this phase.⁶⁵ This phase should be viewed as the point in time during a conflict when the adversary is mostly defeated, a generally safe environment exists, essential host-nation government services are restored, and external humanitarian relief begins.⁶⁶

The conventional military excels at large-scale operations in general, but there are few organizations that have the capability to match the sheer magnitude of humanitarian supplies the conventional military is able to provide. This phase, however, requires more than supplies and large-scale capabilities—it also requires specific attention to host-nation governmental and security force structures. The conventional military has the capacity to address some of these concerns, and routinely does—but through ad-hoc solutions like Provincial Reconstruction Teams (PRTs). SOF contributes to operational success in this phase by conducting security-force assistance (SFA), humanitarian and civic assistance, and support to public diplomacy.⁶⁷ These tasks partly comprise, or are constituent elements of, SOCOM’s list of core activities, meaning that SOF conduct specific military

⁶⁴ Joint Chiefs of Staff, *Joint Publication 3-0*.

⁶⁵ Joint and Coalition Operational Analysis and Joint Staff J7, “Decade of War, Volume I: Enduring Lessons from the Past Decade of Operations,” Military Governmental (Washington D.C.: JCOA, June 15, 2012); R. Jeffrey Smith, “U.S. Military Admits Major Mistakes in Iraq and Afghanistan,” *Atlantic*, June 11, 2012, <https://www.theatlantic.com/international/archive/2012/06/us-military-admits-major-mistakes-in-iraq-and-afghanistan/258339/>.

⁶⁶ Joint Chiefs of Staff, *Joint Publication 5-0*.

⁶⁷ Joint Chiefs of Staff, *Joint Publication 3-13, Information Operations* (Suffolk, VA: United States Department of Defense, United States Joint Forces Command, Joint Warfighting Center, Joint Doctrine Group, 2014), http://www.dtic.mil/doctrine/new_pubs/jp3_13.pdf.

occupational specialty (MOS) training to validate their proficiency and ability to successfully execute these types of host nation government support operations.⁶⁸

Given the recent discussion and criticism of large-scale stabilization activities in Afghanistan, it would seem that options more limited in scope may be desirable.⁶⁹ Specifically, with regard to the case of Afghanistan, considerations of when it is morally justified to exit a war, a set of principles recently elucidated as *jus ex bello*—it might be considered immoral to cut our losses and leave.⁷⁰ Although many might consider stability operations in Afghanistan a mistake, the moral question for the military force already in Phase Four is how to maximize good and prevent harm in the form of collateral damage and civilian casualties. Viewing the application of SOF from this perspective, it seems wise to make use of SOF’s indigenous approach, precision targeting, and ability to understand and influence the environment. Even if simply for utilitarian reasons such as efficient war prosecution and victory—SOF application has the potential to bring operations into closer alignment with the moral demands of the revisionist *jus in bello* framework.⁷¹

4. Phase Five: Enable Civil Authority

The fifth phase of the continuum usually begins when, or shortly after, the military endstate is achieved. During this period, the large-scale combat forces will likely be re-deploying from the major operation or campaign as the joint force provides support to the legitimate civil government authorities in the host nation. Also during this phase, the joint

⁶⁸ Joint Chiefs of Staff, *Joint Publication 3-05, Special Operations* (Suffolk, VA: United States Department of Defense, United States Joint Forces Command, Joint Warfighting Center, Joint Doctrine Group, 2014).

⁶⁹ Smith, “U.S. Military Admits Major Mistakes in Iraq and Afghanistan.”

⁷⁰ Robert Mackey, “‘Just War’ Theory and Afghanistan,” *The Lede* (blog), December 10, 2009, <https://thelede.blogs.nytimes.com/2009/12/10/just-war-theory-and-afghanistan/>; Darrel Moellendorf, “Jus Ex Bello,” *Journal of Political Philosophy* 16, no. 2 (June 2008): 123–36, <https://doi.org/10.1111/j.1467-9760.2008.00310.x>; David Rodin, “The War Trap: Dilemmas of Jus Termination,” *Ethics* 125, no. 3 (2015): 674–695.

⁷¹ Indigenous approach, precision targeting, and understand and influence are three of the four pillars of ARSOF capabilities outlined in USASOC’s new vision publication. United States Army Special Operations Command, “USASOC 2035.”

operation ends and transitions host-nation support activities conducted by U.S. Forces to the Geographic Combatant Command (GCC).⁷²

With large-scale combat forces seeing the end of the joint and combined operation, the focus transitions from U.S. Forces leading operations and enabling host nation security forces to host nation government structures and their security apparatuses. Conventional military forces might be stationed permanently in the post-conflict nation if the U.S. and host nation sign a status of forces agreement (SOFA) in which the host nation agrees to the extended presence of U.S. Forces. The SOFA was the basis of extended troop deployments in post-World War II Europe, and it continues to be true of U.S. Forces stationed in Germany today. However, in most cases, the U.S. will not leave large-scale combat forces for extended periods in the host nation.

As the large-scale combat forces re-deploy, conventional and SOF CA, PSYOP, and SF will continue to increase governmental capacity in the host nation through their indigenous approach to mentorship programs—executing what is known as a foreign internal defense (FID).⁷³ FID is another SOCOM core-activity executed by SOF who are formally assessed, specially selected, trained, and validated in their ability to successfully conduct this type of operation. When conventional forces employ SOF in this manner, the DoD and U.S. Government stand on firm moral ground. The indigenous approach executed by SOF, in both Phase Five and ultimately the return to Phase Zero, is based on the invitation and request for training and support from the host nation as expressed within a SOFA.

Whether the nation decides to sign a SOFA is their choice as a sovereign nation. This process allows the potential partner nation to exercise sovereignty with the finality they are morally entitled to as a collective representation of their people's rights.⁷⁴ If the nation decides to sign a SOFA or request support, then there is no morally illegitimate

⁷² Joint Chiefs of Staff, *Joint Publication 3-0*; Joint Chiefs of Staff, *Joint Publication 5-0*.

⁷³ United States Army Special Operations Command, "USASOC 2035."

⁷⁴ It is important to note that this notion is an essential element of the legalist paradigm which is a traditional component of just war thinking. Walzer, *Just and Unjust Wars*; Dubik, *Just War Reconsidered*. among many others.

element to the presence of U.S. SOF in the host nation. When the SOFA is signed or not signed, the continuum returns to Phase Zero and normal diplomatic relations can resume.

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III. SOF IN SUPPORT OF OBJECTIVES BELOW THE LEVEL OF ARMED CONFLICT

The previous chapter established that SOF employment in support of objectives in armed conflict represents an evolution of just war thinking—particularly when dealing with irregular warfare. Knowing how SOF provide precise support to traditional military objectives is critical to understanding how asymmetric warfare executed by conventional forces might achieve more successful outcomes with continued support from SOF. What if, however, we might avoid or prevent an extremely difficult and resource intensive large-scale combat operation in the first place? Are we able to achieve successful national policy outcomes short of overt warfare? This chapter argues that it is necessary to expand just war theory to encompass competition below the level of armed conflict—Phase Zero. Since Phase Zero occurs below the level of armed conflict, the expansion results in two proposed developments aimed at providing a framework to evaluate when and how SOF employment below the threshold of armed conflict is morally permissible. Put differently, the application of SOF in competition below the level of armed conflict, as in Phase Zero and Phase One, has the potential to better enable the U.S. whole of government approach during peacetime intergovernmental relations and in spaces where state or non-state actors compete for influence. Based on previous National Security Strategy (NSS) documents since the Clinton administration, it seems that we believe that, at least in a general sense, engagement will produce a more stable international environment where armed conflict is less likely.⁷⁵ As identified in Chapter I, Figure 1, Notional Operation Plan Phases overlaid on the Continuum of Conflict, military doctrine describes engagement outside of traditional armed conflict to occur in Phase Zero and Phase One.⁷⁶

⁷⁵ Clinton, “A National Security Strategy of Engagement and Enlargement,” 1994; Clinton, “A National Security Strategy of Engagement and Enlargement,” 1995; Clinton, “A National Security Strategy of Engagement and Enlargement,” 1996; Clinton, “A National Security Strategy for a Global Age”; Bush, “The National Security Strategy of the United States of America”; Bush, “National Security Strategy 2006”; Obama, Barack, “National Security Strategy,” May 2010; Obama, Barack, “National Security Strategy,” February 2015.

⁷⁶ Joint Chiefs of Staff, *Joint Publication 3-0*; Joint Chiefs of Staff, *Joint Publication 5-0*.

State and non-state actors routinely compete for influence within relevant spheres to facilitate their foreign policy objectives.⁷⁷ The U.S. Government relies on the DOS to integrate efforts in normalized diplomatic relations, which the DoD defines as Phase Zero.⁷⁸ Although the U.S. Government also relies on the DOS to integrate efforts in competitive influence scenarios, we must question what organizational capability the DOS possesses to achieve success in this venue. The DOS is well-equipped to maintain the status-quo in most situations, but the DoD—in particular, SOF, has some of the greatest capability to advise and assist Allied or Partnered Nations in building security-force capacity and to attribute state-on-state aggression or political warfare. Make no mistake, the argument here is not that the DoD should, nor could it for that matter, supplant the DOS in managing relations with other nations. It is rather, that the U.S. Government—specifically DOS, should invest more heavily in competition below the level of armed conflict conducted by SOF in Phase Zero for both practical and moral reasons.

A. PRACTICAL REASONS FOR SOF IN PHASE ZERO

The chief practical reason for pursuing Phase Zero is avoiding the cost of major combat operations. Avoiding war saves blood, treasure, and ultimately exposes the U.S. to less risk of protracted entanglements that carry open-ended and usually long-term commitments. Contemporary authors like Joseph Nye, Jr., have espoused the efficiencies to be gained by incorporating *soft power* into our foreign policy approach.⁷⁹

What actions are SOF capable of executing in Phase Zero that might facilitate the maintenance of more peaceful inter-state interaction, or at least serve to bound the potential for major combat operations vis-à-vis armed conflict? Perhaps more importantly, what actions *should* SOF be allowed to undertake in support of this objective and *how* should they go about doing it? From a practical perspective, SOF bring precise and nuanced

⁷⁷ United States Army, United States Army, and United States Marine Corps, “Multi-Domain Battle: Evolution of Combined Arms for the 21st Century 2025-2040.”

⁷⁸ “U.S. Code: Title 22 -Foreign Relations and Intercourse,” accessed August 7, 2017, <https://www.law.cornell.edu/uscode/text/22>.

⁷⁹ Nye, *Soft Power: The Means to Success in World Politics*; Joseph Nye, “The Future of Power,” *Bulletin of the American Academy* 1967th Stated (February 16, 2011): 45–52.

capabilities that are designed to produce stability when used within the steady-state Phase Zero environment. SOF achieve these through the execution of core activities, which are the essential tasks SOF are specially selected, manned, trained, and equipped to produce successful outcomes in across the continuum of conflict.⁸⁰ See Figure 2. Special Operations Core Activities as Listed in Joint Publication 3–05. SOF core activities can produce noteworthy results that enable the U.S. whole of government in Phase Zero even when the presence of a competitive influence does not exist and remains especially true in the case that DOS Country Teams assess that a competitive influence is present. In fact, the U.S. Army and Marine Corps are nearing completion on their jointly developed operating concept that describes multi-domain battle and further details the competition occurring below the level of armed conflict.⁸¹

As John Arquilla suggests in “The (B)end of History” the intersection of networks’ influence on peace, conflict, and state actors’ sovereignty has the potential to cause protracted conflict—perhaps most likely below the level of armed conflict.⁸² Arquilla also concludes that these non-state and state actors can coexist.⁸³ Fussell and Lee determine that in order for state actors to remain adaptive and agile against networked threats they must reconfigure organizations’ internal networks and increase collective awareness.⁸⁴ If this is true, then there is an opportunity, perhaps most notably so in SOF’s capability to increase combined Ally and Partner state-actors’ internal networks while simultaneously increasing their combined awareness and capacity to act.

⁸⁰ Descriptions of the SOF core activities are listed in detail in Joint Chiefs of Staff, *Joint Publication 3-05*.

⁸¹ United States Army, United States Army, and United States Marine Corps, “Multi-Domain Battle: Evolution of Combined Arms for the 21st Century 2025-2040.”

⁸² John Arquilla, “The (B)End of History,” *Foreign Policy Magazine*, 2011.

⁸³ Arquilla.

⁸⁴ Doowan Lee and Christopher Fussell, “Networks at War: Organizational Innovation and Adaptation in the 21st Century,” in *Beyond Convergence: World without Order*, ed. Hilary Matfess and Micheal Miklaucic, Center for Complex Operations (Washington, D.C.: National Defense University, 2016).

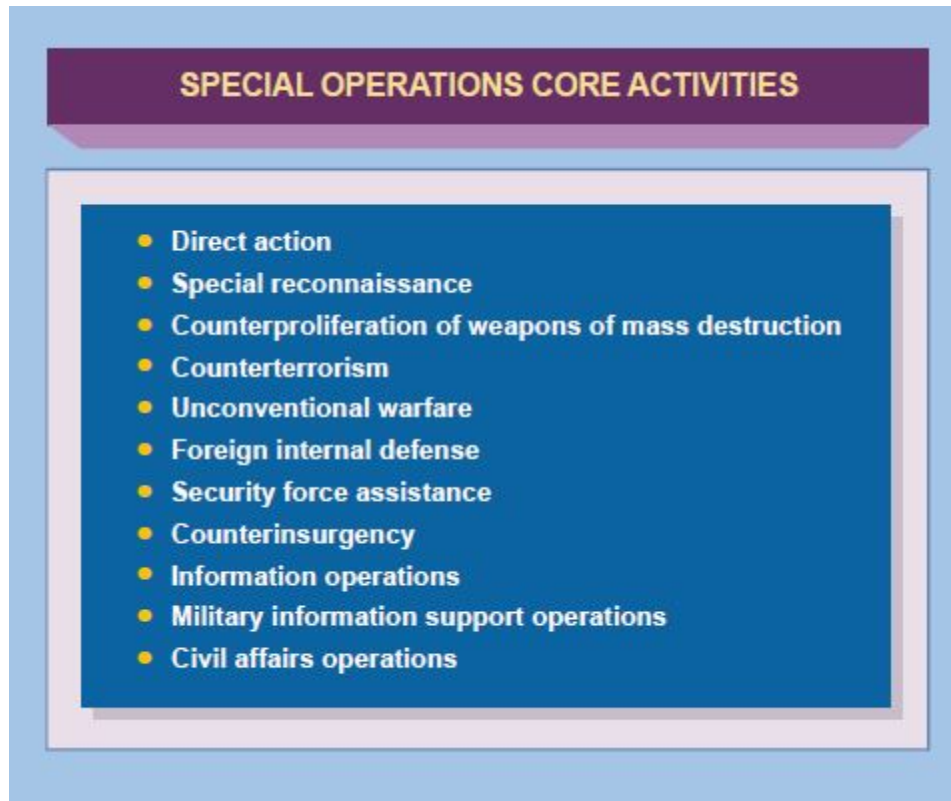


Figure 2. Special Operations Core Activities as Listed in Joint Publication 3-05⁸⁵

1. SOF Paradigms and Capabilities

Successful strategic outcomes rarely occur overnight. They should be viewed as iterative processes that occur over long-term time horizons. In the SOF community, this is colloquially referred to as *the long view*. The long view is challenging for many reasons, not least among them the forces generation cycle and the relatively short strategic cycles that the DoD runs on with respect to a (generally true) two-year command tenure. In other words, military commanders routinely change about every two years. When commanders change, organizational priorities and visions tend to change as well. For many military objectives, this can be a great benefit. When it comes to Phase Zero, this can add a challenging element to a successful outcome with respect to long term regional goals and

⁸⁵ Source: Joint Chiefs of Staff, *Joint Publication 3-05*.

priorities. SOF do not have a longer command tenure, nor do they synchronize efforts better than the traditional cycle—they just do it differently.⁸⁶

The key difference in the approach is simply that SOF are organized to train other nations' security forces and build their capacity to secure their own nations.⁸⁷ SOF also provide training to operationalize a host-nation government's strategy assigned to their security forces, this type of training and synthesis results in critical feedback to DOS foreign affairs and diplomatic missions abroad as well as the GCCs that help to frame their strategies to support stability. U.S. ASOC describes its Army Special Operations Forces' (ARSOF) capabilities in four pillars, *the indigenous approach*, *precision targeting*, *understand & influence*, and *crisis response*.⁸⁸ Considering the characteristics of competition below the level of armed conflict, all four of these pillars contribute—either directly or indirectly, to the capability to make meaningful contributions to successful outcomes during Phase Zero.⁸⁹ Thinking about the comprehensive nature possible when combining direct and indirect methods in Phase Zero, the result is the adaptability and flexibility to remain balanced and agile to meet conditions subject to either emergent or persistent challenges.⁹⁰

⁸⁶ Petit, *Going Big by Getting Small: The Application of Operational Art by Special Operations in Phase Zero*.

⁸⁷ Petit.

⁸⁸ United States Army Special Operations Command, "USASOC 2035"; United States Army Special Operations Command, "USASOC Strategy 2035."

⁸⁹ The use of direct and indirect refers to the U.S. DoD's outlining of the direct and indirect approaches in Joint Publication 3-05. The U.S. DoD defines the direct approach as, "A direct approach may be required where an HN government is losing ground in its struggle with an insurgency or there is no viable HN government. The first task in this situation is to establish security and control in as wide an area and extent as possible." Joint Chiefs of Staff, *Joint Publication 3-05*. The U.S. DoD defines the indirect approach as, "An indirect approach utilizes more development and diplomatic efforts than military efforts to address the insurgency. This approach is best suited to early intervention but requires that the HN be viable and viewed as legitimate." Joint Chiefs of Staff.

⁹⁰ The U.S. DoD defines balanced approach in Joint Publication 3-05 as, "The balanced approach is a more even blend of U.S. diplomatic, developmental, and military efforts. Military efforts are secondary and subordinate to diplomatic and development activities when using this approach." Joint Chiefs of Staff, *Joint Publication 3-05*.

2. Strategic Utility of Phase Zero

The diffusion of global power structures and technology has given rise to non-state actors' capability and capacity to undermine regional security and stability.⁹¹ Recently, near-peer state-actors have increased coercive activities that also negatively affect regional security and stability—for example, Russia's actions compromising Ukraine's national borders or China's expansionist activities in the highly-disputed South China Sea. U.S. Diplomatic Missions led by the DOS, as well as strategic interactions planned by the GCCs, during peacetime governmental interactions are designed to augment Allies' and Partners' capability and capacity to provide for their own security and guarantee their continued sovereignty. The strategy being, to foster regional security and stability by increasing individual Ally and Partner nation's capability and capacity to respond to persistent and emergent challenges to their sovereignty.⁹²

If, as many senior U.S. government officials have urged, our approach to foreign policy should be centered on applying the instruments of national power to create a more balanced engagement strategy that incorporates elements of soft power, then we should recognize the high value of SOF support to diplomatic objectives.⁹³ As former Secretary of Defense (SECDEF) Robert Gates noted in several venues, there must be an increased investment in soft power capability and capacity—so much so that as the SECDEF he was

⁹¹ Nye, "The Future of Power."

⁹² This concept is derived from multiple documents including every NSS document since the Clinton Administration. Clinton, "A National Security Strategy of Engagement and Enlargement," 1994; Clinton, "A National Security Strategy of Engagement and Enlargement," 1995; Clinton, "A National Security Strategy of Engagement and Enlargement," 1996; Clinton, "A National Security Strategy for a Global Age"; Bush, "The National Security Strategy of the United States of America"; Bush, "National Security Strategy 2006"; Obama, Barack, "National Security Strategy," May 2010; Obama, Barack, "National Security Strategy," February 2015.

⁹³ "But, my message today is not about the defense budget or military power. My message is that if we are to meet the myriad challenges around the world in the coming decades, this country must strengthen other important elements of national power both institutionally and financially, and create the capability to integrate and apply all of the elements of national power to problems and challenges abroad. In short, based on my experience serving seven presidents, as a former Director of CIA and now as Secretary of Defense, I am here to make the case for strengthening our capacity to use 'soft' power and for better integrating it with 'hard' power." "Transcript | Robert Gates | Speakers | Landon Lecture Series | Kansas State University." Soft-power is a persuasive approach to international relations, typically involving the use of economic or cultural influence and the ability to attract or co-opt as opposed to coerce (a feature of hard power). Nye, *Soft Power: The Means to Success in World Politics*.

willing to volunteer some of the DoD's budget to advocate a \$36 billion-dollar increase to DOS' foreign affairs budget to achieve what he viewed as an optimal balance between hard and soft power competencies.⁹⁴

Another former SECDEF, Leon Panetta, noted the need for strength when dealing with Russia's actions in Eastern Ukraine.⁹⁵ When describing strength, he stated that success is more likely when the "West is willing to enforce it with both economic and military support to the Ukrainians."⁹⁶ This should not be considered an appeal for a hard-power approach, but rather the argument for a comprehensive and balanced response to state aggression that clearly impinged Ukrainian sovereignty. Panetta goes on to argue that providing military aid to Ukraine might not have defeated the Russians militarily, but reasonably may have sent a stronger message that the cost of undertaking such aggression could be higher than originally calculated.⁹⁷ Although the scenario that former SECDEF Panetta describes are beyond Phase Zero, SOF could have achieved the actions he advocates in Phase Zero and changed Russia's calculus, at least in pure-cost terms, by significantly increasing the Russian effort required for success.

3. SOF Effects on Deterrence

In "Bound to Fail," John Arquilla noted several constraints that limit the U.S.' ability to practice effective general and immediate deterrence.⁹⁸ While the work is now over twenty years old, it remains applicable today providing an incisive and detailed look at how political, economic, and military constraints—in many ways of our own doing—

⁹⁴ Ann Scott Tyson, "Gates Urges Increased Funding for Diplomacy," November 27, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/26/AR2007112601985.html>.

⁹⁵ Markus Feldenkirchen and Holger Stark, "Leon Panetta Interview: 'You Have To Deal with Russians from Strength,'" Spiegel Online, February 14, 2015, <http://www.spiegel.de/international/world/former-us-defense-secretary-leon-panetta-discusses-putin-crisis-a-1018325.html>.

⁹⁶ Feldenkirchen and Stark.

⁹⁷ Feldenkirchen and Stark.

⁹⁸ John Arquilla, "Bound to Fail: Regional Deterrence after the Cold War," *Comparative Strategy* 14, no. 2 (April 1995): 123–35, <https://doi.org/10.1080/01495939508403019>.

have reduced the overall efficacy of post-Cold War deterrence.⁹⁹ The article makes several recommendations to diminish the limiting factors of the constraints. From the perspective of SOF employment in Phase Zero, a key recommendation is the development of regional power balances. Although the argument is made primarily for a more cost-efficient approach to regional security development, it may apply more broadly in a Phase Zero extended deterrence scenario.

Huth's empirical analysis on deterrence, also nearly thirty years old, provides several additional perspectives useful to the Phase Zero conversation. Primarily, he suggests that a defender's ability to field a comprehensive military defense that would pose an attacker with the prospect of a prolonged conflict and protracted occupation improves deterrence.¹⁰⁰ If it is true that SOF employment in Phase Zero can lessen costs by precluding an expanded scope of conflict, it could also be true that this increases the costs associated with indirect challenges to Ally and Partner nation sovereignty. Huth also notes that there is a deterrent effect produced by a defender's military and diplomatic reciprocity towards aggressors.¹⁰¹ While this may a practical selling point for SOF employment in Phase Zero, morally speaking any action of this type might best be considered under traditional just war concepts or those proposed later in Chapter III.

The key to thinking practically about SOF employment in Phase Zero is understanding that SOF contribute both directly and indirectly to extended deterrence. In a direct sense, SOF enable Ally and Partner security force capability and capacity development, which in turn affects their ability to field a more effective general deterrence force of their own. Indirectly, the very presence of multi-lateral SOF interoperating within a sovereign nation credibly raises the costs of a potential aggressor. An aggressor must now calculate its costs based on the potential response of multiple nations instead of just one.

⁹⁹ Arquilla lays out political, economic, and military constraints that are largely a result of the U.S.' own doing. See Arquilla.

¹⁰⁰ Paul K. Huth, "Extended Deterrence and the Outbreak of War," *The American Political Science Review* 82, no. 2 (June 1, 1988): 423–43.

¹⁰¹ Huth.

As nation-state actors continue to provide irregular proxy or surrogate forces near-peer capability in indirect competition, the effects of aggression transcend the historical paradigm of challenges to a nation's sovereignty. These emergent challenges are distributed in nature as they defy Ally and Partner nation sovereignty in local, regional, national, and supranational affairs. SOF conduct FID and SFA in Phase Zero to facilitate the development of Ally and Partner security force capability and capacity which by design contributes to the execution of their own general deterrence strategy. The ability to effectively respond to challenges executed by state and non-state actors might produce a distributed deterrence effect across multiple spectrums and domains. Perhaps more importantly, this type of deterrence can lead to the *distributed* deterrence effect described above.

B. MORAL REASONS FOR SOF IN PHASE ZERO

While the above considerations provide ample reasons to conclude the U.S. government is justified on practical grounds in taking a more robust Phase Zero approach featuring SOF, there are further considerations that extend beyond merely the pragmatic. Namely, there are also significant moral advantages that can be achieved from a SOF focused Phase Zero approach. The primary moral justification of SOF in Phase Zero is that success precludes subsequent phases of conflict, which should be universally accepted as a morally superior outcome than continued conflict and escalation from competition to armed conflict. If we cannot convince the world of the necessity to avoid the terrible nature of armed conflict for moral reasons, then should we not provide those that would choose it every practical reason possible to avoid it? It is perhaps for this reason that we might find one of the more compelling aspects of the argument, there are sufficient practical and moral reasons for the U.S. Government to more effectively leverage SOF in Phase Zero.

1. How SOF Affect Phase Zero Outcomes

Admittedly, there are some serious risks in the Phase Zero approach. For example, an unintended escalation that might result in an armed conflict due to the perception of external intervention would be a catastrophic result, completely counter to the goal of Phase Zero. One could easily imagine a scenario in which an unsuccessful attempt at Phase

Zero might strategically signal an adversary to escalate incorrectly. While SOF operationalizes a strategy in Phase Zero, the strategy is developed by the DOS—which inherently limits the potential for this type of negative outcome. It is also a primary reason that the DOS’ foreign affairs capability and capacity must be resourced organizationally and financially.¹⁰² Not only does DOS primacy inherently bound incorrect strategic signaling, it also allows the DoD—SOF in particular, to operate by, with, and through Ally and Partner Militaries through their own government’s diplomatic request.¹⁰³

When a nation requests military support through its diplomatic processes, it exercises its sovereign right to dictate how it addresses challenges to its internal security. This in and of itself requires little moral justification, further than the sovereign request of a legitimate national government. Certainly, from a traditional just war theory perspective, there are established ideas on what constitutes a legitimate authority with respect to governments and when one would or would not be justified in supporting them. When these conditions are met, U.S. SOF partnership in Phase Zero is indicative of an agreement between two sovereign’s legitimate decision-makers. These types of exchanges between sovereigns reinforce the legalist paradigm.

SOF Phase Zero activities with Ally and Partner militaries not only promote the exercise of Ally and Partner sovereignty but also seek to safe-guard autonomy. One of the manners that this is achieved is through the identification and establishment of *threats*, *warnings*, and *indicators* (TWIs).¹⁰⁴ Without the capability or capacity to complete a comprehensive assessment of TWIs, any nation might find itself left open to clandestine or covert activities designed to subvert the legitimate government or impose the will of another state or non-state actor. Traditional just war theorists would likely agree that this type of subversion or imposition of will constitute unjust national aggression, violate the

¹⁰² “Transcript | Robert Gates | Speakers | Landon Lecture Series | Kansas State University.”

¹⁰³ The U.S. DOS is the legally authorized prime actor in interstate relations and coordinations outside overseas contingency operations. See U.S. Code: Title 22 -Foreign Relations and Intercourse.

¹⁰⁴ Threats, warnings, and indicators is the author’s phrase to describe how SOF identify and categorize potential external or internal political, informational, military, or economic dangers and how to recognize when and if they are being leveraged to challenge the sovereignty of an Ally or Partner.

legalist paradigm, and could constitute a legitimate *casus belli* in response.¹⁰⁵ According to revisionist just war theory, these activities would likely represent an unjust intent and could also constitute justified *casus belli*. SOF campaign activities in Phase Zero are essential to developing nations in the periphery who have yet to cultivate experienced and mature internal security organizations capable of identifying clandestine or covert subversion.

Successfully determining the presence of a clandestine or covert adversarial presence that inherently challenges a nation's sovereignty is one thing, being able to either effectively interdict the act itself or positively attribute the actor—or both preferably is quite another. To be clear, interdicting adversarial acts that compromise a legitimate Ally or Partner nation would certainly cross a threshold—most especially if the interdiction is unilaterally achieved. This concept will be addressed more thoroughly further on in the chapter, but first, our focus must be on the capability and capacity to properly attribute adversarial acts that constitute national aggression.

During competition below the level of armed conflict, state and non-state actors indirectly challenge the sovereignty of targeted legitimate national governments through clandestine or covert activities.¹⁰⁶ SOF in Phase Zero train, provide or enhance Ally and Partner military capabilities and capacities to attribute an adversarial actor using SOF unique intelligence, targeting, and technological methods.¹⁰⁷ Attribution is one of the most difficult tasks to achieve during Phase Zero, as our own internal discourse regarding alleged external influence in our own domestic election cycle demonstrates. Unless a nation makes very deliberate preparations, proper attribution can only be achieved *ex post facto* and in our case without conclusive proof of external interference or lack thereof—even

¹⁰⁵ *Casus belli* is Latin for *cause for war*.

¹⁰⁶ Philip Kapusta, "The Gray Zone," *United States Special Operations Command* 28, no. 4 (2015): 18; United States Special Operations Command, "Gray Zones," *Mega-Talker Command Talking Points*, no. 3.0 (2015): 2; United States Army Special Operations Command, "USASOC Strategy 2035"; United States Army Special Operations Command, "USASOC 2035"; Joint Chiefs of Staff, *Joint Publication 3-05*; Petit, *Going Big by Getting Small*.

¹⁰⁷ United States Army Special Operations Command, "USASOC 2035."

after nearly a year.¹⁰⁸ Given this example, it is appropriate to explicitly mention that U.S. SOF expertise is not unlimited to a point that proper attribution can be guaranteed—only that the proverb two eyes are better than one certainly applies. U.S. SOF tactics, techniques, and procedures (TTPs) at the very least have the potential to increase the probability of success, especially when the problem is viewed from a resource perspective. Finite resources, particularly in manned, trained, and equipped professional SOF are challenging for any nation—but pooling the appropriate human capital while cultivating multilateral experience gives the best chance at a positive outcome.

When these elements are viewed comprehensively, the potential for limiting an adversary’s capability and capacity to conduct indirect national aggression below the level of armed conflict provides a strong moral justification for the application of SOF in Phase Zero.¹⁰⁹ More definitively, when regarded in the context of preventing the potential for escalation to overt warfare we might consider these types of actions not only as merely morally permissible but, in fact, as morally obligatory. Given the tremendously high moral stakes at play with the possibility of outright warfare, the chance of avoiding escalation altogether provided by Phase Zero operations may be ethically demanded of us.

This discussion of the moral importance of SOF Phase Zero operations leads us to consider a potential expansion of the just war tradition canon to cover the ethical principles and criteria at play in these contexts. As discussed previously in Chapter I, just war theory delivers guidance on the justification for going to war (*jus ad bellum*), how ethically we ought to behave within war (*jus in bello*) and, more recently, moral considerations to be taken after war concludes (*jus post bellum*) and when, indeed, it is right to end it in the first

¹⁰⁸ The author is neither implying that the 2016 U.S. Presidential Election was compromised nor free from external influences or activities. The implication is that even after nearly a year of near-feverish discussion we have yet to have a serious conclusion one way or the other, which demonstrates the insidious nature of indirect clandestine or covert activities aimed at compromising a nation’s sovereignty or autonomy.

¹⁰⁹ The military draws distinction between capability and capacity. Capability is a specific platform or technique that is used to produce operational effects while capacity is used to describe the scope of operational effects that can be achieved with a given platform or technique. An example of capability would be airborne infantry or paratroopers, the corresponding capacity would be the number of airborne brigades a military could man, train, equip, and support.

place (*jus ex bello*).¹¹⁰ Given the above discussions of the moral impact of Phase Zero on warfare, a twin set of criteria logically emerge as prospective expansions to the just war theory frame. First, I propose *jus ad conflictum*, as that set of principles covering when it is morally appropriate to pursue a comprehensive Phase Zero strategy. And, second, I propose *jus in conflictus*, as that set of principles that establish what undertakings are morally permissible within a just competition below the level of armed conflict. If such an expansion of the just war framework is plausible, then, of course, there is much more work to be done than can be achieved here to meaningfully treat the issue. Notwithstanding, there seem to be some clear criteria apparent that draw on traditional and revisionist elements of just war theory that can be explored as a rudimentary starting point for these twin criteria of *jus ad conflictum* and *jus in conflictus*.

2. *Jus ad Conflictum*

One of the primary considerations to determine the morality of applying SOF in Phase Zero should rightly focus on the traditionalist just war theory element known as the *legalist paradigm*.¹¹¹ Walzer's traditional description of the legalist paradigm maintains that all nations retain the right to be free from aggression to exercise their sovereignty and remain autonomous according to their own will. Perhaps this is the most important potential component to *jus ad conflictum*—a nation should not be viewed as just in its application of SOF in Phase Zero if the undertaking violates the sovereignty or imposes the will of one country on another. If that is the case, the action or actions should be viewed as a form of national aggression or worse—unjust warfare and not competition at all. There may be scenarios in which it might be morally permissible to suspend the legalist paradigm in order to meet *jus ad conflictum* criteria. If this is true, then the logic might follow traditional just war theory reasoning without a great need for expansion. These reasons

¹¹⁰ Brian Orend, "Jus Post Bellum," *Journal of Social Philosophy* 31, no. 1 (2000): 117–137; Moellendorf, "Jus Ex Bello."

¹¹¹ Walzer, *Just and Unjust Wars*.

might make a strong moral, and traditional, justification for multilateral or *combined* Phase Zero.¹¹²

Another principle that should likely be included in *jus ad conflictum* might follow a dominant revisionist component—just intent. The reasons for applying SOF in Phase Zero ought to have strong a reflection on the morality of the competition below the level of armed conflict. Certainly, if there is a high-probability of avoiding an armed conflict or the possibility of limiting the potential scope of an armed conflict exists, then a corresponding level of moral permissibility might be contemplated based on the possible outcome. Of course, following the revisionist view of just intent, the desired endstate should also weigh heavily on the considerations of the morality during the competition in Phase Zero, *jus in conflictus*, which will be addressed subsequently.

Both these traditional and revisionist components begin to frame some key elements of *jus ad conflictum*. Specifically, that one should not be considered justified in applying SOF in Phase Zero if the act in and of itself constitutes aggression or the intent is not just. The application of SOF in Phase Zero should not be thought of as just if the aim is not considered a just intent. For example, the intent to expand one's territory, subvert a legitimate government, or any other means that might interfere with a sovereign nation's right to self-determine is not just. Conversely, if the aim is considered a just intent, such as to promote sovereignty, facilitate attribution of adversarial actors, or disrupt national aggression—it could potentially meet the criteria of *jus ad conflictum* and thus might be considered a morally permissible application of SOF in Phase Zero.

¹¹² The term combined in the military sense is used to characterize situations where two or more nations execute operations collectively. This is different than the term *joint* in the military sense as it is used to characterize situations where two or more branches of service execute operations collectively. An example of a combined operation is when three Special Operations Task Units from three different nations operate collectively. An example of a joint operation is when a U.S. Army SFODA and U.S. Navy SEAL Team operate collectively. Thus operations can also be combined and joint in nature, an example would be a U.S. Army SFODA and a Norwegian Navy MJK (SEAL) unit.

3. *Jus in Conflictus*

If a nation determines that they are justified in employing SOF as part of a Phase Zero strategy, then they should strive to do so according to certain moral parameters and bounds in competition below the level of armed conflict. *Jus in conflictus* might require more significant debate to achieve any sort of meaningful consensus in that it requires a high degree of understanding to consider the precise elements of SOF capability and when they might constitute just practices in Phase Zero. It is clear, however, that just practices (acts grounded in proportionality and discrimination) are a key element to *jus in conflictus*—meaning that again we might agree that there are clear traditionalist and revisionist elements to the morality of the issue.

SOF campaign activities in Phase Zero should be just in their practice in order to meet potential criteria under *jus in conflictus*. For example, we might consider a U.S. Special Forces Operational Detachment Alpha (SFODA) assigned as a pilot team during Phase Zero. An SFODA acting as a pilot team might be expected to identify essential elements of an operating environment. Essential elements would likely include assessments of armed factions within an ineffectively governed geographical area to validate their ideological compatibility, understand their goals and objectives, and determine whether or not human rights violations are occurring. These practices appear to be just in that they are aimed at determining with finality what decision makers think they know and a more precise understanding of a given, and usually complex, situation.

An example of potentially unjust practice in Phase Zero that readily comes to mind is coercion. Assigning SOF to conduct Phase Zero campaign activities in a nation that are coercive in nature may not be morally permissible under a fully articulated *jus in conflictus*. However, under certain conditions coercion may be justified using familiar just war thinking vis-à-vis the requirements for intervention or preemption. Conversely, if the practices are aimed at simply influencing they could be considered just and therefore allowable under *jus in conflictus*. Of course, nuanced distinctions between coercion and influence would likely be contentious, tenuous, and difficult—requiring more thorough treatment than can be given here. Moreover, whether a *jus in conflictus* act is deemed permissible or not may itself be impacted by the *jus ad conflictum* considerations of a given

Phase Zero operation.¹¹³ But these are the kinds of matters a fully spelled out *jus in conflictus* would need to address.

¹¹³ This should not be surprising, as a parallel debate is presently underway between traditional and revisionist just war theorists on whether *jus in bello* practices are morally impacted by the *jus ad bellum* considerations of a given military operation. McMahan, *Killing in War*.

IV. CONTEXTUALIZING RUSSIA'S ACTIONS IN UKRAINE 2013–2015 USING THE EXPANSION

In 2014, the world watched as Crimea changed hands following the Ukrainian Revolution of Dignity (known more popularly as the Euromaidan) at the hands of military-equipped, well-trained, and expert separatists.¹¹⁴ The conflict continued to escalate as the Donbas Region of Eastern Ukraine descended into armed revolt, seemingly at the hands of organic separatists who employed incredible organization, main-battle tanks, and heavy artillery with proficiency normally displayed by a professional military force.¹¹⁵ Of course, the Kremlin's official narrative regarding these phenomena made an exceptional and utilitarian use of the language of traditional just war theory. From the very beginning, the Russian Federation's messaging detailed a Ukrainian fascist coup d'état meant to limit the rights of the Ukrainian people to self-determine through their duly-elected President, Viktor Yanukovich.¹¹⁶ After Yanukovich fled to Russia and actions in eastern Ukraine intensified the Russian narrative continued along a similar tack describing a disenfranchised and ethnically Russian population that revolted against an unjust, ultra-nationalist (even fascist), and illegal Ukrainian government that committed unspeakable

¹¹⁴ Damien McElroy and Hannah Strange, "Ukraine Revolution: As It Happened 23rd February - Telegraph," News, Telegraph, February 24, 2014, <https://www.telegraph.co.uk/news/worldnews/europe/ukraine/10657466/Ukraine-revolution-as-it-happened-23rd-February.html>; BBC, *Ukraine Ex-PM Yulia Tymoshenko Addresses Crowds*, 2014; Luke Harding and Shaun Walker, "Crimea Applies to Be Part of Russian Federation after Vote to Leave Ukraine," *Guardian*, March 17, 2014, sec. World News, <http://www.theguardian.com/world/2014/mar/17/ukraine-crimea-russia-referendum-complain-result>; Kathy Lally, William Booth, and Will Englund, "Russian Forces Seize Crimea; Ukraine's Interim President Decries 'Aggression,'" 2014.

¹¹⁵ Peter Coy, Carol Matlack, and Henry Meyer, "The New Great Game: Why Ukraine Matters to So Many Other Nations," Bloomberg, February 24, 2014, <https://www.bloomberg.com/news/articles/2014-02-27/the-new-great-game-why-ukraine-matters-to-so-many-other-nations>; VICE News, *The Kremlin's Secret War: Russia's Ghost Army in Ukraine (Full Length)*, 2014, <https://www.youtube.com/watch?v=C66mAkS1ZfM>; Andrew Higgins, Michael R. Gordon, and Andrew E. Kramer, "Photos Link Masked Men in East Ukraine to Russia," *The New York Times*, December 20, 2017, sec. World, <https://www.nytimes.com/2014/04/21/world/europe/photos-link-masked-men-in-east-ukraine-to-russia.html>.

¹¹⁶ Luke Harding, "Kiev's Protesters: Ukraine Uprising Was No Neo-Nazi Power-Grab," *Guardian*, March 13, 2013, <http://www.theguardian.com/world/2014/mar/13/ukraine-uprising-fascist-coup-grassroots-movement>.

crimes against humanity in these areas.¹¹⁷ We knew at the time that these accusations were likely not true, and we know now that they are most certainly not.¹¹⁸

Bodies like the United Nations did not recognize the annexation of the Crimea and, accurately, decried Russia's following actions in Eastern Ukraine as national aggression.¹¹⁹ The Minsk Agreement slowed, but did not stop, the offensive in Eastern Ukraine, but not before observers and news sources captured ample evidence of Russian brigade tactical groups crossing the Ukrainian border and subsequently withdrawing back to Russian territory after engaging Ukrainian defense forces in their own country.¹²⁰ While the Kremlin claims that these brigade-sized elements of Russian main-line military tanks, self-propelled artillery, mechanized infantry and air defenses were all manned by separatists we know now that, even as outlandish as it sounded at the time, it was, in fact, Russian regular military forces who removed their Russian flags and replaced them with white arm bands to represent their supposed separatist identities.¹²¹

Once their troops began crossing the Ukrainian border to support the separatist Dnieper People's Republic, the Russian Federation crossed a significant moral boundary, as well as a legal boundary under international law, and an important constituent element of just war theory.¹²² Although covert, the action constituted an armed intervention that

¹¹⁷ Chalupa, "Putin's Fabricated Claim of a Fascist Threat in Ukraine"; Cohen, "Vladimir Putin Calls Ukraine Fascist, and Country's New Law Helps Make His Case."

¹¹⁸ VICE News, *Selfie Soldiers: Russia Checks in to Ukraine*, 2015, <https://www.youtube.com/watch?v=Xd3dM2IuMc8>; Lucy Kafanov, "'It Is a Government Crime': The Coffins of Russia's Ghost Soldiers in Ukraine Are Coming Home," VICE News, March 3, 2015, <https://news.vice.com/article/it-is-a-government-crime-the-coffins-of-russias-ghost-soldiers-in-ukraine-are-coming-home>.

¹¹⁹ United Nations General Assembly, "General Assembly Adopts Resolution Calling upon States Not to Recognize Changes in Status of Crimea Region" (New York: United Nations, 2014), GA/11493.

¹²⁰ David M. Herszenhorn and Peter Baker, *Russia Steps up Help for Rebels in Ukraine War*, 2014; VICE News, *Selfie Soldiers*; Gene Thorp, "Russia's Buildup on the Ukraine Border," News, Washington Post, May 2, 2014, <https://www.washingtonpost.com/apps/g/page/world/russias-buildup-on-the-ukraine-border/996/>.

¹²¹ Herszenhorn and Baker, *Russia Steps up Help for Rebels in Ukraine War*; VICE News, *Selfie Soldiers*.

¹²² VICE News, *Selfie Soldiers*; Maksymilian Czuperski et al., "Hiding in Plain Sight: Putin's War in Ukraine" (Washington, D.C.: Atlantic Council, May 2015), <http://www.atlanticcouncil.org/publications/reports/hiding-in-plain-sight-putin-s-war-in-ukraine-and-boris-nemtsov-s-putin-war>.

clearly violated the legalist paradigm as described by Walzer.¹²³ The tanks, soldiers, and military convoys that crossed the border represent the visible part of these events, much like an iceberg—they are above the waterline and plainly seen. But what about the two-thirds of the iceberg located beneath the water-line? In this case, the Russian operations to prepare the environment through irregular and political actions—that is, Russian Phase Zero operations—should be viewed by the international community as equal violations of the principles of just war theory every bit as much as they would the more traditional armed incursions that occurred in the Donbass region. Indeed, this case provides an excellent example of some reasons why, and how, the just war theory framework could and should be expanded into *jus ad conflictum* and *jus in conflictus* to include competition below the level of armed conflict.

A. THE POSSIBILITY OF IRREGULAR OPERATIONS DURING THE EUROMAIDAN

Late in 2013, the Ukrainian Parliament passed a resolution with widespread support that would associate Ukraine with the European Union (EU) resulting in reform-based loans from the International Monetary Fund (IMF).¹²⁴ Entry requirements for EU accession include a variety of requirements codified in a document known as the *acquis communautaire*, thirty-five chapters of law and organizing principles that represent the values of the EU.¹²⁵ The *acquis* primarily ensures for a common legal-framework and the free movement of people, capital, and goods.¹²⁶ The EU and Ukrainian Rada purpose-built the reforms of the Ukrainian political process and judiciary system to facilitate Ukraine's

¹²³ Walzer, *Just and Unjust Wars*; Walzer, *Arguing about War*; Walzer, "The Moral Standing of States: A Response to Four Critics."

¹²⁴ Coy, Matlack, and Meyer, "The New Great Game."

¹²⁵ T. R. Reid, *The United States of Europe: The New Superpower and the End of American Supremacy* (New York: Penguin Press, 2004); Council of the European Communities, "Treaty on European Union, 'Maastricht Treaty,'" in *Commission of the European Communities* (Luxembourg: Office for Official Publications of the European Communities, 1992), 1–260, https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_on_european_union_en.pdf; European Commission, "Enlargement Policy 2013-2014" (Brussels, Belgium: European Union, October 16, 2013), https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2013/package/strategy_paper_2013_en.pdf.

¹²⁶ Reid, *The United States of Europe: The New Superpower and the End of American Supremacy*.

eventual application and accession into the EU.¹²⁷ Former Ukrainian President Viktor Yanukovich, largely viewed as an elected Russian-surrogate, refused to sign the measure; he instead unilaterally signed a fifteen-billion-dollar loan-deal with Russia without the support of the Ukrainian Rada.¹²⁸ The action resulted in the January protests that would eventually grow into the five-day Revolution of Dignity and led to his ouster in late February.¹²⁹

Through their elected representatives in the Rada who unanimously voted for the measure, the people of Ukraine had overwhelmingly supported Europeanization and a move away from Moscow's orbit. While Russia's political elite had interfered in Ukraine's past attempts to move closer to the west, Russia had continually warned Ukraine that moving towards either EU or North Atlantic Treaty Organization (NATO) membership would not be tolerated, and as such constituted a red-line of sorts for Moscow.¹³⁰

During the initial protests in Independence Square, Yanukovich attempted to remain in power by declaring a state of emergency which resulted in the suspension of the Ukrainian constitution and the mobilization of an elite and federalized counter-terrorism and internal security unit, the Security Service of Ukraine (SBU).¹³¹ There have been accusations surrounding the SBU's actions that led to the death of over 100 protesters on

¹²⁷ The Ukrainian Parliament is known as <<Верхóвна Ра́да Украї́ни >> which is translated as "Supreme Council of Ukraine" commonly referred to as simply "Rada" or "Council." Coy, Matlack, and Meyer, "The New Great Game."

¹²⁸ Oksana Grytsenko, "Yanukovich Dodges Details on Russia Deal," News, KyivPost, December 19, 2013, <https://www.kyivpost.com/article/content/ukraine-politics/yanukovich-dodges-details-on-russia-deal-334030.html>; Daniel Sandford, "Russia Offers Ukraine Major Economic Assistance," *BBC News*, December 17, 2013, sec. Europe, <http://www.bbc.com/news/world-europe-25411118>.

¹²⁹ McElroy and Strange, "Ukraine Revolution: As It Happened 23rd February - Telegraph."

¹³⁰ Sophia Kishkovsky, "Georgia Is Warned by Russia Against Plans to Join NATO," *The New York Times*, June 7, 2008, sec. Europe, <https://www.nytimes.com/2008/06/07/world/europe/07russia.html>; "Medvedev Warns Against NATO Entry," *BBC News*, June 6, 2008, <http://news.bbc.co.uk/1/hi/world/europe/7439941.stm>.

¹³¹ Independence Square is the author's direct translation of Майдан Незалежності (transliterated to Maidan Nezalezhnosti) which is where the popular term for the revolution, Euro-Maidan, is derived from. Ukrainians also refer to the events in Independence Square as, Revolution of Dignity. Revolution of Dignity is the author's direct translation of Революція гідності (transliterated to Revolutsiya Hidnosti). Security Service of Ukraine is the author's direct translation of Служба Безпеки України (СБУ) (transliterated to Sluzhba Bezpeky Ukrayiny or SBU).

February 20, 2014.¹³² The Ukrainian government claimed one year later that the Russian Main Intelligence Agency (GRU) had supported the SBU with its premier counter-terror and internal security unit, Alpha.¹³³ The Russian government flatly denies the claim while evidence remains either illusive or difficult to verify.¹³⁴ Further demonstrating the inherently challenging task of correctly attributing aggression, either by state or non-state actors that challenges the sovereignty of a nation—in this case, Ukraine. However, it strains credulity to believe that the Russian government provided neither direct nor indirect support of the SBU's objectives set by Former President Yanukovich.¹³⁵

The SBU and GRU have a well-developed history of conducting combined training and security operations resulting in both countries' elite units having an incredible degree of interoperability. Evidence suggests the GRU's Alpha unit was providing either on-site indirect support or conducting security force assistance operations during the actions that resulted in the deaths of the protestors.¹³⁶ The evidence that places the GRU's Alpha unit in the same place as SBU forces during the actions on February 20, 2014, coupled with

¹³² It is unclear how events transpired with the Ukrainian Government accusing the Russian Federation of on-the-ground GRU support to Yanukovich's SBU-led attempt at suppression and the Russian Federation counter-claiming that the illegal vote of no-confidence by the Rada was influenced by Western intelligence agencies—primarily the U.S. CIA. These sources, and information in general, provide more evidence supporting the former than the latter. Gabriel Gatehouse, "The Untold Story of the Maidan Massacre," *BBC News*, February 12, 2015, <http://www.bbc.co.uk/news/magazine-31359021>; "Ukraine Accuses Russia over Maidan 2014 Killings," *BBC News*, February 20, 2015, sec. Europe, <http://www.bbc.com/news/world-europe-31548896>.

¹³³ Main Intelligence Agency is the author's direct translation of Главное разведывательное управление (ГРУ) (transliterated to Glavnoye razvedyvatel'noye upravleniye). Accusation of Alpha's employment in support of SBU security operations were first made by the Ukrainian government. "The Untold Story of the Maidan Massacre," *BBC News*, February 12, 2015, <http://www.bbc.co.uk/news/magazine-31359021>; "Ukraine Accuses Russia over Maidan 2014 Killings," *BBC News*, February 20, 2015, sec. Europe, <http://www.bbc.com/news/world-europe-31548896>.

¹³⁴ "Ukraine Accuses Russia over Maidan 2014 Killings."

¹³⁵ The U.S. DoD defines direct support as, "A mission requiring a force to support another specific force and authorizing it to answer directly to the supported force's request for assistance. Also called DS. See also close support; general support; mission; mutual support; support. (JP 3-09.3)." The U.S. DoD also defines support as, "1. The action of a force that aids, protects, complements, or sustains another force in accordance with a directive requiring such action. 2. A unit that helps another unit in battle. 3. An element of a command that assists, protects, or supplies other forces in combat. See also close support; direct support; general support; inter-Service support; mutual support. (JP 1)." Joint Chiefs of Staff, *Joint Publication 1-02*.

¹³⁶ "Ukraine Accuses Russia over Maidan 2014 Killings."

Moscow's talking points and strategic interest in keeping Yanukovych in power make it appear likely that Russia, at a minimum, was providing support to Yanukovych's SBU.

In interstate interaction, it is neither unusual nor patently immoral to influence outcomes or provide security force assistance to another country—particularly when viewed from a Westphalian balance-of-power perspective. State actors routinely attempt to influence other nations and do so certainly to benefit their respective agendas, but this in and of itself does not indicate an inherently immoral or unethical interaction. At this point in the case prior to the actual revolution, it remains somewhat unclear whether Russia had undertaken any action that would directly violate the norms and conventions of the traditional just war theory framework. Even so, Russia's warnings and historical relationship with respect to Ukraine's Western ambitions should have triggered cautionary signs throughout the international community. Or, at the very least, these factors should have alluded to the strong possibility of covert or clandestine activity that might limit Ukraine's ability to self-determine or exercise sovereignty within its borders.

Although traditional violations of just war theory are not readily apparent, any time SOF are used for offensive purposes that inherently compromise the integrity of a state actor or limit a polity's ability to conduct its political process, a breach of sovereignty can be deduced. As such, this form of 'covert aggression' against a state could potentially be considered a violation of traditional just war theory *jus ad bellum* norms and thereby should be considered an unjust and immoral use of SOF. Admittedly, however, this kind of conclusion forces *jus ad bellum* conclusions on acts that are clearly occurring *before* outright armed conflict began. As such, this kind of moral pronouncement fits uncomfortably within the standard expanse of the just war tradition. Alternatively, however, this form of 'covert aggression' could be considered a violation of the *jus ad conflictum* expansion of the framework suggested in Chapter III. This way of outlining Russia's actions offers a more straight-forward read of how Ukraine's sovereignty was rapidly diminished as a pre-cursor to armed conflict. As such, this depiction of events offers a more comprehensive explanatory force as opposed to forcing activities below the level of armed conflict into an inadequate *jus ad bellum* framework.

B. IRREGULAR CONFLICT GIVES WAY TO UNCONVENTIONAL WARFARE

Five days later, on February 25, 2014, the Ukrainian Parliament initiated and passed a vote of no confidence, established an interim government, immediately restored the Ukrainian Constitution and solidified plans to conduct an election within months in accordance with Ukrainian Constitutional Law.¹³⁷ In part, the political action was a result of concurrent negotiations and debates in the Ukrainian Rada that reached an agreement, meeting the required three-fourths threshold to execute constitutional changes, effectively reinstating elements illegally changed by Yanukovich.¹³⁸ The following day, Russian Spetsnaz began an unconventional warfare campaign to take control of the Crimean Peninsula.¹³⁹ On February 27, 2014, some 60 well-armed and unmarked men conducted a direct action operation to take control of the Crimean Parliamentary building.¹⁴⁰ While the

¹³⁷ McElroy and Strange, “Ukraine Revolution: As It Happened 23rd February - Telegraph.”

¹³⁸ <<Відомості Верховної Ради України>> “Ukrainian Rada” [Translated by Scott W. Orr 2017], “<<Конституція України № 254 к96>> ‘Constitution of Ukraine No. 254 1996’ [Translated by Scott W. Orr 2017],” Pub. L. No. 254 (1996), <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=uk>; <<Відомості Верховної Ради України>> “Ukrainian Rada” [Translated by Scott W. Orr 2017], “<<Про Відновлення Дії Окремих Положень Конституції України>> ‘On Restoring Specific Provisions of the Constitution of Ukraine’ [Translated by SWO 2017],” Laws of Ukraine, February 21, 2014, <http://zakon.rada.gov.ua/go/742-18>.

¹³⁹ Spetsnaz is the English language adaption of <<Войска специального назначения>> the English literal translation is “Forces of Special Purposes”. The Spetsnaz are the Russian Federation’s experts in unconventional warfare. The U.S. DoD defines unconventional warfare in Joint Publication 1-02 as, “Activities conducted to enable a resistance movement or insurgency to coerce, disrupt, or overthrow a government or occupying power by operating through or with an underground, auxiliary, and guerrilla force in a denied area.” Joint Chiefs of Staff, *Joint Publication 1-02*. Atlantic Council’s report exposes Russian acts in Ukraine which categorically fit the U.S. DoD description of unconventional warfare. Czuperski et al., “Hiding in Plain Sight.”

¹⁴⁰ The U.S. DoD defines direct action in Joint Publication 1-02 as, “Short-duration strikes and other small-scale offensive actions conducted as a special operation in hostile, denied, or diplomatically sensitive environments and which employ specialized military capabilities to seize, destroy, capture, exploit, recover, or damage designated targets.” Defense, “Department of Defense Dictionary of Military and Associated Terms.” These articles are archives of breaking news from Interfax Ukraine that were released through an RSS feed. They do not indicate that the fighters who took over the buildings are Russian, but do lead the military mind to see organization and synchronization impossible to achieve through serendipity. “<<В здании крымского Парламента на данный момент находится около 60 человек>> ‘There are currently around 60 people in the Crimean Parliament Building’ [Translation by Scott W. Orr 2015],” News, <<Интерфакс-Украина>> “Interfax-Ukraine” [Translation by Scott W. Orr 2015], February 27, 2014, <https://interfax.com.ua/news/general/193049.html>; “<<Здание крымского Парламента и Правительства захвачены неизвестными>> ‘The Crimean Parliament Building has been Seized by Unknown Individuals’ [Translation by Scott W. Orr 2015],” News, <<Интерфакс-Украина>> “Interfax-Ukraine” [Translation by Scott W. Orr 2015], February 27, 2014, <https://interfax.com.ua/news/general/193046.html>.

Kremlin never admitted to the operation, it is unlikely that any group of separatists, or even Russian regular forces, could have executed the operation with the precision and speed required to plan, set-conditions, and execute the operation to achieve success. In the following days, the international media observed direct action operations of similar scope on governance targets throughout the Crimean Peninsula and the Donbass Region.¹⁴¹ When considering these events, the timeline should not be overlooked—specifically the speed and synchronicity required to rapidly seize key governmental infrastructure across three-regions of Ukraine only forty-eight hours after the Rada’s official vote to remove Yanukovich.

These actions marked a serious expansion of Russian operations, crossing several important thresholds relevant to the issue at hand. Russian GRU and Spetsnaz operatives transitioned from Phase Zero influence and shaping type actions to Phase Two actions to seize the initiative. Here, it is important to make clear that even though Russian operations were covert in nature—meaning they attempted to conceal both the actor and the act—they should still be viewed as an armed conflict. Simply removing one’s Velcro national flag insignia from a uniform and replacing it with a white arm-band does not make you any less a Russian Soldier.¹⁴² Also noteworthy is the technical military lexical descriptions used to characterize the events detailed above. For example, tactical tasks like “rapidly seize” or operational descriptions of core activities like “direct action” are generally indicative of a shift from a Phase Zero scenario.

While just war theory generally does not adequately address such forms of irregular warfare, we can assume that using irregular military forces in direct action operations to limit self-determination indicate that any scenario which an external state or non-state actor seeks to impose its will on the population of another country constitutes aggression.¹⁴³ As such, the traditional norms of the standard just war theory framework will apply. At that

¹⁴¹ Higgins, Gordon, and Kramer, “Photos Link Masked Men in East Ukraine to Russia.”

¹⁴² VICE News, *Selfie Soldiers*; VICE News, *The Kremlin’s Secret War*; Kafanov, “‘It Is a Government Crime.’”

¹⁴³ “Every violation of territorial integrity or political sovereignty of an independent state is called aggression.” Walzer, *Just and Unjust Wars*. p 52.

point, the principles governing *jus ad conflictum* and *jus in conflictus* would no longer be the prism through which to apply moral evaluation to the situation. The unconventional warfare operations conducted by Russian irregular forces clearly fits this description of aggression. On most accounts, then, it seems it would constitute a violation of *jus ad bellum* and the grounds for an appropriate *belli*.

This transition from the proposed expansion to more traditional just war argumentation is critical for several reasons. As demonstrated, these events, when viewed through the continuum of conflict, reveal the Kremlin's intentions to be other than just. Even more importantly, the events following the transition demonstrate a wider scope of conflict moving more towards large-scale combat operations. Chapter IV sections C and D addresses Russian activities beyond Phase Zero through the traditional just war perspective to demonstrate the moral consequences of failing to correctly identify and validate precursor activities in a pre-armed conflict state. Moreover, the examples of continued Russian irregular warfare outlined in this chapter demonstrate the moral strength of a key argument developed in Chapter III. In this case, a *jus ad conflictum* framework applied to SOF in support of Ukraine, from say the U.S. or Europe for example, might have successfully attributed Russian precursor activities in their Phase Zero. This demonstrates how a revised just war theory framework, specifically the proposed *jus ad conflictum* and *jus in conflictus* offerings from Chapter III, may have provided the evaluative and normative tools for the international community to make more informed and meaningful decisions to bound the scope of violence.

All just war theorists, of course, agree that there are times when armed intervention is morally permissible. Namely, those times when the principles of *jus ad bellum* are met, such as just cause, just intent, last resort, legitimate authority, and so on.¹⁴⁴ Not surprisingly, the Kremlin made several claims, albeit well after Russia had taken control of Crimea and began operating in Eastern Ukraine, two of which would seemingly have

¹⁴⁴ Walzer, *Just and Unjust Wars*; McMahan, "Unjust War in Iraq"; Jeff McMahan, *Rethinking the "Just War," Part 1*, vol. 2017, January 26th, 2012, https://opinionator.blogs.nytimes.com/2012/11/11/rethinking-the-just-war-part-1/?_r=1; Jeff McMahan, *Rethinking the "Just War," Part 2*, vol. 2017, January 26th, 2012, <https://opinionator.blogs.nytimes.com/2012/11/12/rethinking-the-just-war-part-2/>.

satisfied criteria for a just intervention. The first Kremlin claim for potential legitimacy was Russian support to secessionists in Crimea to prevent oppression of separatists by the Ukrainian Government.¹⁴⁵ The second claim was Russian humanitarian intervention to prevent unnecessary human-loss at the hands of Ukrainian ultra-national fascists.¹⁴⁶

Regardless of inadequate attempts to justify Russia's intervention in Phase Two, the proposed revision of the just war theory framework could provide the additional clarity to apply a more precise moral evaluation of the observed precursor activities. If the proposed expansion is feasible, an additional benefit of providing decision and policy makers a more defined perspective of illegitimate Phase Zero activities designed, as in this case, to set-conditions for armed conflict.

Further, conclusions drawn from activities evaluated by *jus ad conflictum* and *jus in conflictus* might have significant implications on our subsequent *jus ad bellum*, and perhaps even *jus in bello*, judgments of any escalated conflicts.

C. RUSSIAN NARRATIVES MAKE USE OF JUST WAR THEORY

In order to further discussion, it is necessary to continue the narrative of Russian activities beyond the author's proposition. This is meant to establish several important aspects of the discussion. Primarily, that there are serious moral consequences for failing in Phase Zero—and in this case, the international community may bear some responsibility for failing to understand the gravity of the situation. Additionally, the next several sections are meant to remind us that there has been no resolution, and Russia is doing everything it can to justify its continued involvement—co-opting the language of just war theory. Finally, it is meant to leave the reader with two ideas. The first, that this outcome may have been avoided, as it is certainly not justified according to the proposed expansion or just war thinking, and the second that we might yet be able to intervene below the level of armed

¹⁴⁵ Cohen, "Vladimir Putin Calls Ukraine Fascist, and Country's New Law Helps Make His Case"; Chalupa, "Putin's Fabricated Claim of a Fascist Threat in Ukraine."

¹⁴⁶ Cohen, "Vladimir Putin Calls Ukraine Fascist, and Country's New Law Helps Make His Case"; Chalupa, "Putin's Fabricated Claim of a Fascist Threat in Ukraine"; VICE News, *Mariupol: The Final Line of Defense - Russian Roulette (Dispatch 99)*, accessed May 25, 2018, <https://www.youtube.com/watch?v=1kXprJk8hm4>.

conflict using the ideas proposed here. This section seeks to identify the weaknesses of Russian justifications through the more traditional application of just war theory.

First, Vladimir Putin claimed that the people of Crimea were conducting a civil war with the goal of secession.¹⁴⁷ This claim is difficult to disprove with finality, however, and according to Walzer the burden of proof (which he rightly argues should be high for the use of military force) falls on the intervening state.¹⁴⁸ Unsurprisingly, the Kremlin made every attempt to portray the Ukrainians, as well as the U.S. and NATO, as the aggressors.¹⁴⁹ Even so, it is quite difficult to argue that within forty-eight hours a Ukrainian interim government (that had already set a date for inclusive elections) had managed to disenfranchise the population of Crimea, and just as fast, the disenfranchised population had organized themselves toward a secessionist movement. Given the history between Russia, the Ukraine, and Crimea, it is particularly difficult to imagine a region with the most autonomous rights within Ukraine and adequate representation within the parliament could decide, virtually overnight, that secession was their only option. It seems equally unlikely that the Ukrainian interim government could decide or even mount any type of oppressive measures in the same measure of time. Given these conditions, it is apparent that the Russian Federation did not meet traditional just war conventions for a legitimate military intervention on behalf of a secessionist movement.¹⁵⁰

¹⁴⁷Team of the Official Website of the President of Russia, "Vladimir Putin Answered Journalists' Questions on the Situation in Ukraine."

¹⁴⁸ "The burden of proof falls on any political leader who tries to shape the domestic arrangements or alter the conditions of life in a foreign country. And when the attempt is made with armed force, the burden is especially heavy." Walzer, *Just and Unjust Wars*. p82

¹⁴⁹ RT, Russia's government-supported news outlet, has made innumerable counter-factual claims in attempt to paint the Ukrainians as fascist. Accusations of fascism are a favorite tactic of the Russian Federation and Former Soviet Union. "Kiev Snipers Hired by Maidan Leaders - Leaked EU's Ashton Phone Tape," RT International, March 5, 2014, <https://www.rt.com/news/ashton-maidan-snipers-estonia-946/>. The Russians also leveraged YouTube to produce propaganda aimed at youth in the EU to shape their opinions on the Ukraine conflict. Канал о Войне- оружии истории, <<Я Русский Оккупант>> "I Am a Russian Occupier" [Translated by Scott W. Orr 2015], accessed May 13, 2017, <https://www.youtube.com/watch?v=FYy1ivz7jXQ>.

¹⁵⁰ Walzer, *Just and Unjust Wars*.

Vladimir Putin and the Russian Federation made, and continue to reinforce, accusations that ultra-nationalist fascists constitute the Ukrainian interim government.¹⁵¹ The accusations have ranged from rhetoric to serious human-rights violations executed by Ukrainian volunteer units. The Kremlin exploited these claims to justify additional military involvement and reinforced Vladimir Putin's primary narrative of the Russian Federation acting as moral agents to limit unnecessary human-loss.¹⁵² Approaching the legitimacy of the Kremlin's military intervention from a just war theory perspective, the only condition is sufficient "moral shock" of humanity.¹⁵³ Michael Walzer points out that politicians, and states, have ulterior motives that are more often than not rooted in utilitarian agendas.¹⁵⁴ In order to analyze the Russian argument within Walzer's framework, observers must parse the chronology of events to omit allegations that occurred after the Russians executed their military intervention. Note that the entirety of allegations against the Ukrainians, in fact, occurred *after* the Russians intervened militarily, making the Russian claim for justification to intercede actually an argument of *jus in bello* rather than the supposed *jus ad bellum* grounds. Walzer does not, of course, make any argument for humanitarian preemption. Walzer, among many in the traditional just war theory frame, would likely view the very concept as an illegitimate revision to the legalist paradigm that is excessively permissive and immoral in its potential to unnecessarily subordinate the value of human life to state ambitions.¹⁵⁵

¹⁵¹ Team of the Official Website of the President of Russia, "Vladimir Putin Answered Journalists' Questions on the Situation in Ukraine."

¹⁵² Cohen, "Vladimir Putin Calls Ukraine Fascist, and Country's New Law Helps Make His Case."

¹⁵³ "Humanitarian intervention is justified when it is a response (with reasonable expectations of success) to acts "that shock the moral conscience of mankind." Walzer, *Just and Unjust Wars*. p107.

¹⁵⁴ "It is not necessarily an argument against humanitarian intervention that it is, at best, partially humanitarian, but it is a reason to be skeptical and to look closely at the other parts." Walzer, *Just and Unjust Wars*, 102.

¹⁵⁵ For more on the moral justification of humanitarian intervention, see James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (Oxford: Oxford University Press, 2012); Don E. Scheid, ed., *The Ethics of Armed Humanitarian Intervention* (Cambridge, MA: Cambridge University Press, 2014). Across all such scholarship, the idea of preemptive grounds for humanitarian intervention is highly contentious, to say the least. And, in any case, the claim made by the Russians is even worse than the most far-flung idea of preemption could ever grant, for the acts they used as justification for their operations occurred *after* the initial intervention.

The traditional just war development of *jus ad bellum*, when applied to the Russian military intervention in Crimea and the Donbass Region, clearly deconstructs the Russian narrative and reveals an unjust predication for armed conflict. Russia's use of unconventional warfare to separate a people from their legitimate representative government using information operations that include political coercion and propaganda are examples of oppression.¹⁵⁶ The Kremlin failed to sufficiently justify a just cause for its military intervention and violated the Ukraine's territorial integrity and political sovereignty, which are Walzer's two elements of aggression.¹⁵⁷ Beyond the traditional Walzerian characterization of the constituent elements of aggression, the existence of state aggression is an exceedingly clear violation of *jus ad bellum* and therefore represents the key characteristics of an unjust armed conflict. Outside the typified orthodoxy of just war theory that Walzer represents, it would be unlikely that one might find a just war theorist that would not agree that state aggression that resulted in armed intervention represents an unjust cause.

D. RUSSIAN ACTIONS AND CONTINUING INVOLVEMENT IN EASTERN UKRAINE

Beginning on February 25, 2015, the Russian Federation began unconventional warfare and major combat operations in Crimea and Eastern Ukraine.¹⁵⁸ The result of the Russian military operations is the persistent occupation of Crimea and ongoing hostilities in the Donbass Region of Eastern Ukraine. After the Russians occupied Crimea, they

¹⁵⁶ The U.S. DoD defines information operations in Joint Publication 1-02 as, "The integrated employment, during military operations, of information-related capabilities in concert with other lines of operation to influence, disrupt, corrupt, or usurp the decision-making of adversaries and potential adversaries while protecting our own." Joint Chiefs of Staff, *Joint Publication 1-02*.

¹⁵⁷ "Every violation of territorial integrity or political sovereignty of an independent state is called aggression." Walzer, *Just and Unjust Wars*. p52.

¹⁵⁸ The U.S. DoD defines unconventional warfare in Joint Publication 1-02 as, "Activities conducted to enable a resistance movement or insurgency to coerce, disrupt, or overthrow a government or occupying power by operating through or with an underground, auxiliary, and guerrilla force in a denied area." Joint Chiefs of Staff, *Joint Publication 1-02*.

The U.S. DoD defines major combat operations in Joint Publication 1-02 as, "A series of tactical actions (battles, engagements, strikes) conducted by combat forces of a single or several Services, coordinated in time and place, to achieve strategic or operational objectives in an operational area." Joint Chiefs of Staff.

oversaw the Crimean Status Referendum, which offered voters the option to join the Russian Federation. An incredulously high voter turnout of 83.1% coupled with an equally incredulous 96.77% vote in favor of joining Russia led to the Duma and Vladimir Putin's ratification of Crimean annexation.¹⁵⁹ Although the UN did not recognize the annexation of Crimea, the Russian Federation considered its occupation of Crimea complete and focused its efforts on Eastern Ukraine.¹⁶⁰ The Donbass Region, particularly Luhansk, Debaltseve, Donetsk, and a drive towards Mariupol, represent a preponderance of Russia's military effort. Although the Russian's use of military force is not justifiable using the traditional development of *jus ad bellum*, observers can further analyze Russia's conduct of the war through the perspective of the second component of just war theory: *jus in bello*.¹⁶¹ The Russian unconventional warfare campaign executed by their surrogates, irregular, and regular forces are by nature oppressive and undermine the legitimacy of Russia's execution of the war.¹⁶²

In order to apply the framework of *jus in bello* to events in the Donbass Region, it is necessary to unmask Russian involvement in the events of Eastern Ukraine. Shortly after GRU Spetsnaz forces seized key regional government facilities in Crimea on February 27, 2014, similar direct action operations occurred throughout the Donbass Region in the first weeks of March.¹⁶³ The official Kremlin narrative posits that separatists undertook these complex direct action operations, but the international media provided evidence attributing

¹⁵⁹ The Duma is the Legislative Body of the Russian Federation. Crimean Status Referendum statistics demonstrate a high probability of tampering and/or coercion. Harding and Walker, "Crimea Applies to Be Part of Russian Federation after Vote to Leave Ukraine."

¹⁶⁰ United Nations General Assembly, "General Assembly Adopts Resolution Calling upon States Not to Recognize Changes in Status of Crimea Region."

¹⁶¹ *Jus in bello* is the principle of acting justly during war, which provides a set of moral values that describe how war should be conducted by soldiers doing the fighting. See, Walzer, *Just and Unjust Wars*, among others.

¹⁶² Additionally, Walzer's just war theory expansion of extreme emergency and double-effect are not applicable to the Kremlin's violations of the war convention.

¹⁶³ The U.S. DoD defines direct action in Joint Publication 1-02 as, "Short-duration strikes and other small-scale offensive actions conducted as a special operation in hostile, denied, or diplomatically sensitive environments and which employ specialized military capabilities to seize, destroy, capture, exploit, recover, or damage designated targets." Joint Chiefs of Staff, *Joint Publication 1-02*.

the operations to members of the 22nd and 45th Spetsnaz Regiments.¹⁶⁴ The weeks following the initial disruption of the Donbass population's ability to interact with their legitimate and elected representation, the Russians supported a budding insurgency by mounting effective information operations, providing equipment, and logistic support to separatist forces.¹⁶⁵ The Russian support to the separatists includes command and control (C2), artillery support, and military reinforcement.¹⁶⁶ The Russians exercised C2 of separatist forces through GRU agents embedded within the separatist command units; examples are Igor Girkin and Igor Bezler.¹⁶⁷ These facts contradict the official Kremlin narrative, but more importantly establish Russian responsibility for the moral conduct of separatist forces operating under their leadership. Regardless of the lack of an appropriate

¹⁶⁴ *The New York Times* published an article featuring photos of known Russian Spetsnaz Operators linking them to operations in Crimea and Donbass. Higgins, Gordon, and Kramer, "Photos Link Masked Men in East Ukraine to Russia."

¹⁶⁵ Herszenhorn and Baker, *Russia Steps up Help for Rebels in Ukraine War*.

¹⁶⁶ The U.S. DoD defines command and control in Joint Publication 1-02 as, "The exercise of authority and direction by a properly designated commander over assigned and attached forces in the accomplishment of the mission." Joint Chiefs of Staff, *Joint Publication 1-02*. The Daily Beast reported in 2014 that John Kerry disclosed U.S. intelligence reports that identify Russia's orders to Ukrainian separatists. Josh Rogin and Eli Lake, "Kerry: U.S. Taped Moscow's Calls to Its Ukraine Spies," *Daily Beast*, April 29, 2014, sec. World, <https://www.thedailybeast.com/articles/2014/04/29/kerry-u-s-taped-moscow-s-calls-to-its-ukraine-spies>. The OSCE included in a spot report its observation of the movement of unmarked Russian 122mm Artillery pieces, BTR armored personnel carriers, T72 main battle tanks, and T64 main battle tanks into Ukraine from Russia. Organization for Security and Cooperation in Europe (OSCE), "Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM), 8 November 2014 | OSCE," OSCE, November 8, 2014, <https://www.osce.org/ukraine-smm/126483>.

¹⁶⁷ GRU stands for <<Глaвное разведывательное управление>> which in Russian means "main intelligence directorate" [Translation by Scott Orr 2015]. BBC's Jon Sopel attains a video "purporting to show a Russian soldier instructing Ukrainian Police" which depicts a uniformed man with no insignia indicating he is a Russian Agent and that the Horlivka Police are under new leadership. The man in the video is positively identified and confirmed in this thesis as Russian Lieutenant Colonel Igor Bezler. Jon Sopel, "'Russian Soldier' Instructs Ukraine Police," BBC News, April 14, 2014, <http://www.bbc.com/news/av/world-europe-27022548/russian-lieutenant-colonel-meets-ukrainian-police-officers>. Ukraine's Ministry of Internal Affairs produced a wanted announcement for Bezler, see photo on page 60 from Interfax Ukraine, <<Національна Поліція, УА>> "National Police Ukraine," "<<УВАГА! РОЗШУКУЄТЬСЯ БЕЗЛЕР ІГОР МИКОЛАЙОВИЧ>> 'Attention! Wanted Igor Bezler' [Translated by Scott W. Orr 2015]," National Police Unit, Ukraine, <<Розшук терористів>> "Wanted Terrorists," August 14, 2014, <http://old.npu.gov.ua/mvs/control/main/uk/publish/article/1124724;jsessionid=C954FA62EB7596F4B1B79744B1429398>. Additionally, BBC Ukrainian service reported in 2014 that Girkin, also known as Strelkov, is the overall GRU commander on the ground in Donbass <<ББС Україн>> "BBC Ukraine," "<<СБУ: агент Стрелков - доказательство диверсий России>> 'SBU: Agent Strelkov - proof of Russian sabotage' [Translated by Scott W. Orr 2015]," News, BBC, 2014, https://www.bbc.com/ukrainian/ukraine_in_russian/2014/04/140416_ru_s_russian_agent_experts.

justification for the war itself, *jus in bello* calls both state and non-state actors to withstand moral examination of their conduct.¹⁶⁸

In July 2014, a surface-to-air missile destroyed a Malaysian Airlines Boeing 777–200ER near Donetsk while traveling from Amsterdam to Kuala Lumpur. International observers and the associated press quickly identified the launching system as a Russian Buk, known also by its NATO designation SA-17 Grizzly.¹⁶⁹ The Buk is a self-propelled tracked vehicle that is unable to operate without a minimum of three vehicles: a command vehicle, target acquisition radar (TAR), and transporter erector launcher (TEL). The Buk normally operates as part of a battalion, which consists of one command vehicle, one TAR, and six TELs. The Kremlin spuriously claimed that a Ukrainian SU-25, a close air-support attack jet designed for the air-to-ground anti-tank mission similar to the U.S. A-10, shot down the civilian aircraft.¹⁷⁰ An online gamer, Eliot Higgins, used open-source images collected through social media to prove that the Buk not only came from Russia but is currently back in its regular unit, the 53rd Buk Battalion stationed at Kursk, Russia.¹⁷¹ Higgins also established that Russian military commanders dispatched the 53rd Buk Battalion for “exercises” across the border from Donetsk in Russia, making it probable that regular Russian forces operated the Buk surface-to-air launch systems within Eastern Ukraine.¹⁷² Russian regular forces are participating in the conflict in unmarked vehicles

¹⁶⁸ “The argument is twofold: that war is sometimes justifiable and that the conduct of war is always subject to criticism.” Page ix. Walzer, *Arguing about War*.

¹⁶⁹ A Washington Post article summarizes the U.S. intelligence estimate from July 2014. Greg Miller, “U.S. Discloses Intelligence on Downing of Malaysian Jet,” *Washington Post*, July 22, 2014, sec. National Security, https://www.washingtonpost.com/world/national-security/us-discloses-intelligence-on-downing-of-malaysian-jet/2014/07/22/b178fe58-11e1-11e4-98ee-daea85133bc9_story.html. A photo of the Buk is located in Figure 3. Buk or SA-17 Grizzly, Command Vehicle (left), TAR (Target Acquisition Radar) middle, TEL (Transporter Erector Launcher) right.

¹⁷⁰ English Pravda, a Russian state-sponsored propaganda outlet, echoed the Kremlin’s repeated claims. Dmitry Sudakov, “Secret Witness Claims Ukrainian Su-25 Downed Malaysian Boeing MH17,” *PravdaReport*, December 23, 2014, http://www.pravdareport.com/hotspots/disasters/23-12-2014/129365-witness_malaysian_boeing_ukraine-0/.

¹⁷¹ Higgins used a Kickstarter campaign to start an open source analysis service named Bellingcat to track the missile launcher from Russia and its return after the incident. Bellingcat Investigation Team, “Origin of the Separatists’ Buk: A Bellingcat Investigation,” Bellingcat, November 8, 2014, <https://www.bellingcat.com/news/uk-and-europe/2014/11/08/origin-of-the-separatists-buk-a-bellingcat-investigation/>.

¹⁷² Bellingcat Investigation Team.

and uniforms, save for their white armbands indicating their belonging to the separatist movement.¹⁷³ Additionally, the international media reported Ukrainian government claims of an intercepted phone call between Igor Bezler and Russian GRU Colonel Vasili Geranin reporting the incident.¹⁷⁴ See Figure 3. A Ukrainian Ministry of Internal Affairs wanted announcement displaying Igor Bezler in a Russian GRU Lieutenant Colonel uniform. There is no way to definitively ascertain whether Russian soldiers or separatists operated the Buk, of course, nor if the operators knowingly targeted a civilian airliner. In either scenario, the Russians violated the war convention by coordinating and providing the lethal means to successfully target and attack the civilian airliner.

A defender of the Russians here could perhaps offer an appeal to Walzer's principle of extreme emergency. This principle could justify the introduction of the capability if the Russians assessed the likelihood of two conditions established by Walzer. According to Walzer, the Russians would need to establish the immediacy and scope of a threat to their soldiers. An alleged phone call, however, indicates that Russian surrogates believed they had downed a Ukrainian AN-26, a military cargo aircraft incapable of carrying offensive capabilities.¹⁷⁵ While an AN-26 constitutes a legitimate military target, if there was any uncertainty in the initial assessment of Russian surrogates or soldiers would have had enough time to validate the targeted airplanes identity without any threat of attack.

¹⁷³ Simon Ostrovsky of *Vice News* has reported several times in his dispatches the nature of Russian active-duty member's involvement in Eastern Ukraine, he covers it most thoroughly in his special report. *VICE News, Selfie Soldiers*.

¹⁷⁴ International Business Times printed a transcript and video of the alleged phone call see, Alessandria Masi, "MH17 Crash: Full Transcript Of Alleged Phone Intercepts Between Russian Intelligence Officers [VIDEO]," International Business Times, July 7, 2014, <http://www.ibtimes.com/mh17-crash-full-transcript-alleged-phone-intercepts-between-russian-intelligence-1631992>, 2014. Also, CNN played a video recording of the alleged phone call, see Mariano Castillo, "Alleged Phone Call: 'We Have Just Shot Down a Plane,'" CNN, July 18, 2014, <http://www.cnn.com/2014/07/18/world/europe/ukraine-mh17-intercepted-audio/index.html>.

¹⁷⁵ It is, at least, somewhat clear in the following sources—if the alleged phone recordings are legitimate—that Russian Spetsnaz and surrogate forces believed that were indeed targeting a military cargo AN-26. Castillo, "Alleged Phone Call"; Paul Roderick Gregory, "Here Are The Intercepted Transcripts Indicating Russian Rebels Shot Down Malaysian Flight MH17," *Forbes*, July 19, 2014, <https://www.forbes.com/sites/paulroderickgregory/2014/07/19/what-more-smoking-guns-are-needed-for-mh17-the-worlds-first-sam-terrorism/>; Robert Windrem and Mike Brunker, "MH17 Shootdown: Russian Cossack Leader Made 'Spies' Phone Call," NBC News, July 24, 2014, <https://www.nbcnews.com/storyline/ukraine-plane-crash/mh17-shootdown-russian-cossack-leader-made-spies-phone-call-n163311>.

Walzer's expansion of double-effect also excludes the legitimacy of this action. While the act of targeting an AN-26 is a legitimate act of war with a morally acceptable outcome, the destruction of military supplies, the Russians assumed no risk in mitigating potential civilian casualties and the act could not accomplish "sufficient good" in its effect.¹⁷⁶ Even if, from the Russian perspective, the aircraft may have been one AN-26 viewed within the context of a massive military airlift campaign—it was still only one aircraft misidentified as an AN-26, which would have had a relatively small impact on the war and should have sufficiently reduced the urgency of the targeting process thus allowing for the correct identification of the civilian airliner. Consequently, the delivery of one AN-26 worth of military cargo would have been negligible in military effect, and therefore an unjustifiable breach of the *jus in bello* principles of proportionality and military necessity.

¹⁷⁶ Explicitly defined by Walzer, "1) The act is good in itself or at least indifferent, which means, for our purposes, that it is a legitimate act of war. 2) The direct effect is morally acceptable—the destruction of military supplies, for example, or the killing of enemy soldiers. 3) The intention of the actor is good, that is he aims only at the acceptable effect; the evil effect is not one of his ends, nor is it a means to his ends. 4) The good effect is sufficiently good to compensate for allowing the evil effect; it must be justifiable under Sidgwick's proportionality rule." Walzer, *Just and Unjust Wars*. p153.

УВАГА! РОЗШУКУЄТЬСЯ БЕЗЛЕР ІГОР МИКОЛАЙОВИЧ

14.08.2014 | 17:53



Безлер Ігор Миколайович (Безлер Ігорь Николаевич), 30.12.1965 р.н., уродженець: АР Крим, м. Сімферополь, громадянин України, зареєстрований за адресою: АР Крим, м. Сімферополь, вул. Тургенева, 20, кв. 70.

Має прізвисько «**Бес**»

Розшукується за вчинення злочину, передбаченого ч. 5 ст. 260 КК України.

При використанні матеріалу гіперпосилання на mvs.gov.ua обов'язкове



Figure 3. A Ukrainian Ministry of Internal Affairs Wanted Announcement Displaying Igor Bezler in a Russian GRU Lieutenant Colonel Uniform¹⁷⁷

¹⁷⁷ Source: <<Национальная Полиция, УА>> “National Police Ukraine,” “<<УВАГА! РОЗШУКУЄТЬСЯ БЕЗЛЕР ІГОР МИКОЛАЙОВИЧ>> ‘Attention! Wanted Igor Bezler’ [Translated by Scott W. Orr 2015].”



Figure 4. Left: Buk or SA-17 Grizzly, Command Vehicle; Middle: TAR (Target Acquisition Radar); Right: TEL (Transporter Erector Launcher)¹⁷⁸

The facts surrounding the Russian unconventional warfare campaign, specifically its unofficial involvement in Eastern Ukraine, uncovers the most glaring violation of *jus in bello*: the Kremlin cannot achieve a military desired end state without violating, and continuing to violate, the war convention. If the Kremlin's narrative of preventing human loss as moral agents is true, then there is no reason to obfuscate its involvement. The only reason to conceal the actor is to disguise state-sponsored aggression designed to wrest the population away from the Ukrainian government. By coordinating the actions of the separatists through GRU C2, the Russians can continually isolate the population from Ukrainian aid using the separatists to violate the war convention allowing the Russian

¹⁷⁸ Source: Vitaly Kuzmin, "Buk-M1-2 Air Defence System in 2010.," 2010, https://photos.smugmug.com/Military/Engineering-Technologies-2010/Part60001-copy/933721453_M6Kic-O.jpg.

regular forces to speed, unfettered, across the border to deliver Russian aid.¹⁷⁹ These facts reveal the true purpose of not validating the Buk's targeting; it likely did not matter if it was an AN-26 or a civilian airliner. It made no difference if it was military supplies or not because the intended effect was not the destruction of war material. The intended effect was to demonstrate the lack of security the Ukrainian government is able to provide in its own country. It is in these facts and demonstration that reveal the Kremlin's true purpose to annex Eastern Ukraine as it did Crimea by violating Eastern Ukraine's right to self-determination.

E. CONCLUSIONS FROM RUSSIAN INVOLVEMENT

When viewed in context with other Russian interventions in South Ossetia, Transnistria, Chechnya, and Azerbaijan, Russia's actions should not be viewed as justified Phase Zero campaign activities at all. We ought to call them what they are—deliberate acts of aggression meant not only to impose the Kremlin's will upon Kiev—and others—but to expand its physical territory. In short, it was an unjust political warfare campaign followed by an unjust unconventional war that resulted in serious negative consequences for Ukrainian residents in the Donbas Region.

While Russian actions began as contemporary examples of Phase Zero, they very clearly escalated to an armed conflict that continues today. Perhaps if actors like the U.S. or Europeans had committed to justified Phase Zero actions the outcome may have been different—or perhaps not, it is impossible to say. Yet, this example more clearly demonstrates the necessity of an expansion of the just war theory framework to include the morality of competition below the level of armed conflict. There is, of course, much more room for discussion on this case in particular. For example, it is only *reasonably* clear to the author when and where *exactly* Russian activities in Phase Zero became unjustified. Chapter IV attempts to show this point, but we must admit that these issues can, and may always remain, incredibly contentious. It is precisely for that reason that this case is

¹⁷⁹ Ostrovsky's interview of several isolated locals displays their hatred for the separatists who steal their belongings and food. It also shows their love for the Russian soldiers who provide them food and shelter. VICE News, *Selfie Soldiers*.

described here, its complexity is indicative of the nature of contemporary warfare in which capabilities are applied indirectly and irregularly—and if allowed to continue unopposed the result is an undeclared, unacknowledged, and illegitimate series of actions that result in the same harm as traditional overt warfare.

V. FINAL THOUGHTS AND CONCLUSIONS

The capability and capacity of SOF to act in support of a comprehensive whole of government approach to Phase Zero should not be undervalued. Particularly, we should give thoughtful consideration to the many moral advantages delivered by employing SOF in Phase Zero as opposed to subsequent phases of conflict. We might agree that it is morally preferable to apply more robust efforts in Phase Zero using SOF than to apply SOF in support of traditional military deployments during large-scale combat operations or major campaigns. This thesis demonstrated that in both scenarios, applying SOF would increase the likelihood of positive outcomes, at least from a moral perspective, and therefore both objectives represent worthwhile investments. However, it should also be clear that we have the potential to get a much higher return on our investments by choosing to capitalize on a morally superior objective in Phase Zero.

This thesis only scratched the surface of what needs to become a key academic focus area for subsequent just war theory discourse. It is clear that just war theory, neither traditional nor revisionist, has yet to sufficiently address how governments—let alone militaries and SOF—should justly compete below the level of armed conflict. Understandably, this question of morality in competition may represent somewhat of a logical Pandora’s Box—where does normal interaction end and competition below the level of armed conflict begin? Further, if the answer is not clear—are we still expanding just war theory or are we describing a new theory altogether? This means that, at a bare minimum, we are in need of an evolution of the just war theoretical framework. Both to sufficiently treat the issues of *jus ad conflictum* and *jus in conflictus*, and to develop and articulate the appropriate moral norms for contemporary and future indirect and irregular conflict short of overt warfare. Although this thesis has identified some clear moral criteria and principles that would likely fall within such an expansion, there is by all accounts much more work to be done to advance how we conceptualize these complex moral issues in a contemporary operating environment fraught with further difficulty.

While this thesis by no means approaches completeness in addressing the moral criteria and principles required to correctly frame *jus ad conflictum* or *jus in conflictus*, it

should be evident—even by the limited treatment given—that Russia’s actions in Ukraine constitute a violation of the basic principles outlined. Of course, it is impossible to know what could have been had the U.S. undertaken a more serious Phase Zero approach at the conclusion of the Cold War—or even during the Revolution of Dignity in early 2014. It is possible that this could have made U.S. extended and Ukrainian deterrence more effective, but it is also possible that Russia might have covertly acted to seize Crimea regardless. In either case, the U.S.—or any other nation for that matter—would have been morally justified under *jus ad conflictum* to execute Phase Zero campaign activities in an attempt to support Ukraine in its sovereignty, autonomy, and right to self-determination.

A. IMPLICATIONS FOR FURTHER RESEARCH

The proposed expansion of just war theory requires subsequent research. The sincere aim of this work is to encourage a more thorough and robust discussion about the morality of SOF, most certainly when applied to Phase Zero. The proposed moral elements of activities below the level of armed conflict, *jus ad conflictum* and *jus in conflictus*, could be applied to more historical cases—but perhaps more importantly, to contemporary ones as there may be sufficient time to change the outcome. This thesis only applies the concepts to one state actor, but there may be even more strength in applying these considerations to non-state actors. For example, networks who seek to influence or terrorize the populations of state actors. In some characterizations of network type actors, they seem to succeed in executing something of a perpetual Phase Zero until they have set conditions appropriately, sometimes after long periods of time, to achieve their goals. These types of considerations might be a good venue to apply the proposed moral evaluations to both adversarial networks and the state actors who might seek to undermine these networks in Phase Zero.

On the practical side, subsequent research might examine the U.S. inter-governmental or the whole of government approach to Phase Zero. If the logic proposed in this thesis is sufficient, we may wish to look closely at our own processes and functions to better apply government resources in a more collaborative way as Fussell and Lee

suggest.¹⁸⁰ Further, it may be just as important to reconfigure our internal networks to better understand the morality of SOF employment in actions below the level of armed conflict. This could play a very important role in reducing the disutility of our post-Cold War deterrence approach as well as bounding the manner in which networks can drastically effect state sovereignty, war, and peace—both concepts identified by Arquilla.¹⁸¹

Further research on the moral aspect of the proposed expansion may rightly focus on the importance of questions about liability in Phase Zero. Traditional and revisionist elements of just war theory are clearly present in the ideas of *jus ad conflictum* and *jus in conflictus*. This thesis does not focus on which is more appropriate, rather that they can both be applied. If we can agree that competition below the level of armed conflict is sometimes justifiable, but is also always subject to moral criticism—then we might ask, as Straswer did, who should die in Phase Zero? If there is a difference in competition below the level of armed conflict and armed conflict, which this thesis argued for in the affirmatory, then there must also be a difference in preventative force and preventative war.

B. POLICY IMPLICATIONS

Given the morally advantageous characterization of SOF employment in Phase Zero applied in this thesis, it may be in our best interest to examine U.S. Public Law. Specifically, Title 22 and Title 10 may need minor revisions or expansions to tidy up the relationships between the DOS and DoD in Phase Zero outside of overseas contingency operations like Afghanistan or Iraq. Further, the U.S. government may need to make a clear policy toward bad-actors. For example, the U.S. policy toward the Democratic People's Republic of North Korea is somewhat vague and undefined in terms of the desired endstate. Without an articulated endstate defined by the U.S. Executive and Legislative branches of government, it is impossible to conduct Phase Zero with respect to the long-game. A

¹⁸⁰ Lee and Fussell, "Networks at War: Organizational Innovation and Adaptation in the 21st Century."

¹⁸¹ Arquilla, "Bound to Fail"; Arquilla, "The (B)End of History."

defined endstate would allow the DOS to develop a strategy that DoD could support with SOF capability in Phase Zero.

DOS Foreign Affairs capacity and capability may need to be increased as former SECDEF Robert Gates argued for during his tenure.¹⁸² SOF are not the only actors in Phase Zero, the DOS must be resourced adequately for this type of application in both a human resources and financial perspective. DOS diplomatic missions abroad must have the personnel and expertise to recognize the moral utility of developing more comprehensive integrated country strategies that include SOF Phase Zero tranches to more effectively manage the status quo.

The DoD, SOCOM in particular, must also adequately resource the indirect approach. This may mean prioritizing the indirect approach higher than the direct, which is admittedly no small task in the contemporary environment's requirements for SOF. Metaphorically speaking, if the direct approach is equivalent to cutting the grass then it is important to understand that it will most certainly grow back. However, if the indirect approach can influence the environment—then we can change the landscape completely and make it much more difficult for the grass to survive in certain situations or settings. Clearly, in this logic the approach must be balanced by the requirements of the environment meaning that the direct approach must not be abandoned—rather we will need both landscapers and grass-cutters to complete the task.

C. FINAL THOUGHTS

Thinking back to Chapter IV, if we apply the proposed expansions to just war theory contained herein we can more accurately, and morally, describe the environment known as the Gray Zone.¹⁸³ It is always advantageous to more completely understand contemporary challenges, both emergent and persistent, before devising potential solutions. Even if the logic applied in this thesis is applied to past Phase Zero operations and determines them to have been unjust acts of aggression—then the logic provided in

¹⁸² Tyson, "Gates Urges Increased Funding for Diplomacy."

¹⁸³ Kapusta, "The Gray Zone."

Chapter III also presents a solution. While, at least in Russia's foray into Ukraine, it appears unlikely that Russia might dislodge its military forces without traditional large-scale combat operations, Phase Zero offers a potential irregular solution in that it might raise the cost to an unbearable level and force a withdrawal—much as insurgency forced the Russian withdrawal from Afghanistan in 1989. The application of SOF in Phase Zero could greatly disrupt the Russian propaganda machine and facilitate transparency to a degree that might leave Russia's ideological position untenable and precipitate positive change. SOF applied in Phase Zero to the South China Sea issue might also be viewed as another potential solution. Properly attributing Chinese corporations or their subsidiaries hired to construct island military bases could lead to precisely leveled sanctions with the potential to disrupt the entire aim of territorial expansion. It is for these reasons that I am hopeful for the future, things that are done are not done forever—and SOF in Phase Zero, although incremental in nature, can build the foundation of positive change through their ethical application in modern conflict.

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